
SENATE BILL 6083

State of Washington

61st Legislature

2009 Regular Session

By Senators Pridemore, Tom, and Kline

Read first time 02/23/09. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to consolidating the growth management hearings
2 boards; amending RCW 36.70A.110, 36.70A.130, 36.70A.172, 36.70A.250,
3 36.70A.270, 36.70A.280, 36.70A.290, 36.70A.295, 36.70A.302, 36.70A.310,
4 36.70A.3201, 36.70A.345, 90.58.190, 34.05.518, and 34.12.020; creating
5 a new section; repealing RCW 36.70A.260; and providing an effective
6 date.

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

8 **Sec. 1.** RCW 36.70A.110 and 2004 c 206 s 1 are each amended to read
9 as follows:

10 (1) Each county that is required or chooses to plan under RCW
11 36.70A.040 shall designate an urban growth area or areas within which
12 urban growth shall be encouraged and outside of which growth can occur
13 only if it is not urban in nature. Each city that is located in such
14 a county shall be included within an urban growth area. An urban
15 growth area may include more than a single city. An urban growth area
16 may include territory that is located outside of a city only if such
17 territory already is characterized by urban growth whether or not the
18 urban growth area includes a city, or is adjacent to territory already

1 characterized by urban growth, or is a designated new fully contained
2 community as defined by RCW 36.70A.350.

3 (2) Based upon the growth management population projection made for
4 the county by the office of financial management, the county and each
5 city within the county shall include areas and densities sufficient to
6 permit the urban growth that is projected to occur in the county or
7 city for the succeeding twenty-year period, except for those urban
8 growth areas contained totally within a national historical reserve.

9 Each urban growth area shall permit urban densities and shall
10 include greenbelt and open space areas. In the case of urban growth
11 areas contained totally within a national historical reserve, the city
12 may restrict densities, intensities, and forms of urban growth as
13 determined to be necessary and appropriate to protect the physical,
14 cultural, or historic integrity of the reserve. An urban growth area
15 determination may include a reasonable land market supply factor and
16 shall permit a range of urban densities and uses. In determining this
17 market factor, cities and counties may consider local circumstances.
18 Cities and counties have discretion in their comprehensive plans to
19 make many choices about accommodating growth.

20 Within one year of July 1, 1990, each county that as of June 1,
21 1991, was required or chose to plan under RCW 36.70A.040, shall begin
22 consulting with each city located within its boundaries and each city
23 shall propose the location of an urban growth area. Within sixty days
24 of the date the county legislative authority of a county adopts its
25 resolution of intention or of certification by the office of financial
26 management, all other counties that are required or choose to plan
27 under RCW 36.70A.040 shall begin this consultation with each city
28 located within its boundaries. The county shall attempt to reach
29 agreement with each city on the location of an urban growth area within
30 which the city is located. If such an agreement is not reached with
31 each city located within the urban growth area, the county shall
32 justify in writing why it so designated the area an urban growth area.
33 A city may object formally with the department over the designation of
34 the urban growth area within which it is located. Where appropriate,
35 the department shall attempt to resolve the conflicts, including the
36 use of mediation services.

37 (3) Urban growth should be located first in areas already
38 characterized by urban growth that have adequate existing public

1 facility and service capacities to serve such development, second in
2 areas already characterized by urban growth that will be served
3 adequately by a combination of both existing public facilities and
4 services and any additional needed public facilities and services that
5 are provided by either public or private sources, and third in the
6 remaining portions of the urban growth areas. Urban growth may also be
7 located in designated new fully contained communities as defined by RCW
8 36.70A.350.

9 (4) In general, cities are the units of local government most
10 appropriate to provide urban governmental services. In general, it is
11 not appropriate that urban governmental services be extended to or
12 expanded in rural areas except in those limited circumstances shown to
13 be necessary to protect basic public health and safety and the
14 environment and when such services are financially supportable at rural
15 densities and do not permit urban development.

16 (5) On or before October 1, 1993, each county that was initially
17 required to plan under RCW 36.70A.040(1) shall adopt development
18 regulations designating interim urban growth areas under this chapter.
19 Within three years and three months of the date the county legislative
20 authority of a county adopts its resolution of intention or of
21 certification by the office of financial management, all other counties
22 that are required or choose to plan under RCW 36.70A.040 shall adopt
23 development regulations designating interim urban growth areas under
24 this chapter. Adoption of the interim urban growth areas may only
25 occur after public notice; public hearing; and compliance with the
26 state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110.
27 Such action may be appealed to the ((appropriate)) growth management
28 hearings board under RCW 36.70A.280. Final urban growth areas shall be
29 adopted at the time of comprehensive plan adoption under this chapter.

30 (6) Each county shall include designations of urban growth areas in
31 its comprehensive plan.

32 (7) An urban growth area designated in accordance with this section
33 may include within its boundaries urban service areas or potential
34 annexation areas designated for specific cities or towns within the
35 county.

36 **Sec. 2.** RCW 36.70A.130 and 2006 c 285 s 2 are each amended to read
37 as follows:

1 (1)(a) Each comprehensive land use plan and development regulations
2 shall be subject to continuing review and evaluation by the county or
3 city that adopted them. Except as otherwise provided, a county or city
4 shall take legislative action to review and, if needed, revise its
5 comprehensive land use plan and development regulations to ensure the
6 plan and regulations comply with the requirements of this chapter
7 according to the time periods specified in subsection (4) of this
8 section.

9 (b) Except as otherwise provided, a county or city not planning
10 under RCW 36.70A.040 shall take action to review and, if needed, revise
11 its policies and development regulations regarding critical areas and
12 natural resource lands adopted according to this chapter to ensure
13 these policies and regulations comply with the requirements of this
14 chapter according to the time periods specified in subsection (4) of
15 this section. Legislative action means the adoption of a resolution or
16 ordinance following notice and a public hearing indicating at a
17 minimum, a finding that a review and evaluation has occurred and
18 identifying the revisions made, or that a revision was not needed and
19 the reasons therefor.

20 (c) The review and evaluation required by this subsection may be
21 combined with the review required by subsection (3) of this section.
22 The review and evaluation required by this subsection shall include,
23 but is not limited to, consideration of critical area ordinances and,
24 if planning under RCW 36.70A.040, an analysis of the population
25 allocated to a city or county from the most recent ten-year population
26 forecast by the office of financial management.

27 (d) Any amendment of or revision to a comprehensive land use plan
28 shall conform to this chapter. Any amendment of or revision to
29 development regulations shall be consistent with and implement the
30 comprehensive plan.

31 (2)(a) Each county and city shall establish and broadly disseminate
32 to the public a public participation program consistent with RCW
33 36.70A.035 and 36.70A.140 that identifies procedures and schedules
34 whereby updates, proposed amendments, or revisions of the comprehensive
35 plan are considered by the governing body of the county or city no more
36 frequently than once every year. "Updates" means to review and revise,
37 if needed, according to subsection (1) of this section, and the time
38 periods specified in subsection (4) of this section or in accordance

1 with the provisions of subsections (5) and (8) of this section.
2 Amendments may be considered more frequently than once per year under
3 the following circumstances:

4 (i) The initial adoption of a subarea plan that does not modify the
5 comprehensive plan policies and designations applicable to the subarea;

6 (ii) The adoption or amendment of a shoreline master program under
7 the procedures set forth in chapter 90.58 RCW;

8 (iii) The amendment of the capital facilities element of a
9 comprehensive plan that occurs concurrently with the adoption or
10 amendment of a county or city budget;

11 (iv) Until June 30, 2006, the designation of recreational lands
12 under RCW 36.70A.1701. A county amending its comprehensive plan
13 pursuant to this subsection (2)(a)(iv) may not do so more frequently
14 than every eighteen months; and

15 (v) The adoption of comprehensive plan amendments necessary to
16 enact a planned action under RCW 43.21C.031(2), provided that
17 amendments are considered in accordance with the public participation
18 program established by the county or city under this subsection (2)(a)
19 and all persons who have requested notice of a comprehensive plan
20 update are given notice of the amendments and an opportunity to
21 comment.

22 (b) Except as otherwise provided in (a) of this subsection, all
23 proposals shall be considered by the governing body concurrently so the
24 cumulative effect of the various proposals can be ascertained.
25 However, after appropriate public participation a county or city may
26 adopt amendments or revisions to its comprehensive plan that conform
27 with this chapter whenever an emergency exists or to resolve an appeal
28 of a comprehensive plan filed with ((a)) the growth management hearings
29 board or with the court.

30 (3)(a) Each county that designates urban growth areas under RCW
31 36.70A.110 shall review, at least every ten years, its designated urban
32 growth area or areas, and the densities permitted within both the
33 incorporated and unincorporated portions of each urban growth area. In
34 conjunction with this review by the county, each city located within an
35 urban growth area shall review the densities permitted within its
36 boundaries, and the extent to which the urban growth occurring within
37 the county has located within each city and the unincorporated portions
38 of the urban growth areas.

1 (b) The county comprehensive plan designating urban growth areas,
2 and the densities permitted in the urban growth areas by the
3 comprehensive plans of the county and each city located within the
4 urban growth areas, shall be revised to accommodate the urban growth
5 projected to occur in the county for the succeeding twenty-year period.
6 The review required by this subsection may be combined with the review
7 and evaluation required by RCW 36.70A.215.

8 (4) The department shall establish a schedule for counties and
9 cities to take action to review and, if needed, revise their
10 comprehensive plans and development regulations to ensure the plan and
11 regulations comply with the requirements of this chapter. Except as
12 provided in subsections (5) and (8) of this section, the schedule
13 established by the department shall provide for the reviews and
14 evaluations to be completed as follows:

15 (a) On or before December 1, 2004, and every seven years
16 thereafter, for Clallam, Clark, Jefferson, King, Kitsap, Pierce,
17 Snohomish, Thurston, and Whatcom counties and the cities within those
18 counties;

19 (b) On or before December 1, 2005, and every seven years
20 thereafter, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and
21 Skamania counties and the cities within those counties;

22 (c) On or before December 1, 2006, and every seven years
23 thereafter, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and
24 Yakima counties and the cities within those counties; and

25 (d) On or before December 1, 2007, and every seven years
26 thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield,
27 Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille,
28 Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities
29 within those counties.

30 (5)(a) Nothing in this section precludes a county or city from
31 conducting the review and evaluation required by this section before
32 the time limits established in subsection (4) of this section.
33 Counties and cities may begin this process early and may be eligible
34 for grants from the department, subject to available funding, if they
35 elect to do so.

36 (b) A county that is subject to a schedule established by the
37 department under subsection (4)(b) through (d) of this section and
38 meets the following criteria may comply with the requirements of this

1 section at any time within the thirty-six months following the date
2 established in the applicable schedule: The county has a population of
3 less than fifty thousand and has had its population increase by no more
4 than seventeen percent in the ten years preceding the date established
5 in the applicable schedule as of that date.

6 (c) A city that is subject to a schedule established by the
7 department under subsection (4)(b) through (d) of this section and
8 meets the following criteria may comply with the requirements of this
9 section at any time within the thirty-six months following the date
10 established in the applicable schedule: The city has a population of
11 no more than five thousand and has had its population increase by the
12 greater of either no more than one hundred persons or no more than
13 seventeen percent in the ten years preceding the date established in
14 the applicable schedule as of that date.

15 (d) State agencies are encouraged to provide technical assistance
16 to the counties and cities in the review of critical area ordinances,
17 comprehensive plans, and development regulations.

18 (6) A county or city subject to the time periods in subsection
19 (4)(a) of this section that, pursuant to an ordinance adopted by the
20 county or city establishing a schedule for periodic review of its
21 comprehensive plan and development regulations, has conducted a review
22 and evaluation of its comprehensive plan and development regulations
23 and, on or after January 1, 2001, has taken action in response to that
24 review and evaluation shall be deemed to have conducted the first
25 review required by subsection (4)(a) of this section. Subsequent
26 review and evaluation by the county or city of its comprehensive plan
27 and development regulations shall be conducted in accordance with the
28 time periods established under subsection (4)(a) of this section.

29 (7) The requirements imposed on counties and cities under this
30 section shall be considered "requirements of this chapter" under the
31 terms of RCW 36.70A.040(1). Only those counties and cities: (a)
32 Complying with the schedules in this section; (b) demonstrating
33 substantial progress towards compliance with the schedules in this
34 section for development regulations that protect critical areas; or (c)
35 complying with the extension provisions of subsection (5)(b) or (c) of
36 this section may receive grants, loans, pledges, or financial
37 guarantees from those accounts established in RCW 43.155.050 and
38 70.146.030. A county or city that is fewer than twelve months out of

1 compliance with the schedules in this section for development
2 regulations that protect critical areas is making substantial progress
3 towards compliance. Only those counties and cities in compliance with
4 the schedules in this section may receive preference for grants or
5 loans subject to the provisions of RCW 43.17.250.

6 (8) Except as provided in subsection (5)(b) and (c) of this
7 section:

8 (a) Counties and cities required to satisfy the requirements of
9 this section according to the schedule established by subsection (4)(b)
10 through (d) of this section may comply with the requirements of this
11 section for development regulations that protect critical areas one
12 year after the dates established in subsection (4)(b) through (d) of
13 this section;

14 (b) Counties and cities complying with the requirements of this
15 section one year after the dates established in subsection (4)(b)
16 through (d) of this section for development regulations that protect
17 critical areas shall be deemed in compliance with the requirements of
18 this section; and

19 (c) This subsection (8) applies only to the counties and cities
20 specified in subsection (4)(b) through (d) of this section, and only to
21 the requirements of this section for development regulations that
22 protect critical areas that must be satisfied by December 1, 2005,
23 December 1, 2006, and December 1, 2007.

24 (9) Notwithstanding subsection (8) of this section and the
25 substantial progress provisions of subsections (7) and (10) of this
26 section, only those counties and cities complying with the schedule in
27 subsection (4) of this section, or the extension provisions of
28 subsection (5)(b) or (c) of this section, may receive preferences for
29 grants, loans, pledges, or financial guarantees from those accounts
30 established in RCW 43.155.050 and 70.146.030.

31 (10) Until December 1, 2005, and notwithstanding subsection (7) of
32 this section, a county or city subject to the time periods in
33 subsection (4)(a) of this section demonstrating substantial progress
34 towards compliance with the schedules in this section for its
35 comprehensive land use plan and development regulations may receive
36 grants, loans, pledges, or financial guarantees from those accounts
37 established in RCW 43.155.050 and 70.146.030. A county or city that is

1 fewer than twelve months out of compliance with the schedules in this
2 section for its comprehensive land use plan and development regulations
3 is deemed to be making substantial progress towards compliance.

4 **Sec. 3.** RCW 36.70A.172 and 1995 c 347 s 105 are each amended to
5 read as follows:

6 (1) In designating and protecting critical areas under this
7 chapter, counties and cities shall include the best available science
8 in developing policies and development regulations to protect the
9 functions and values of critical areas. In addition, counties and
10 cities shall give special consideration to conservation or protection
11 measures necessary to preserve or enhance anadromous fisheries.

12 (2) If it determines that advice from scientific or other experts
13 is necessary or will be of substantial assistance in reaching its
14 decision, ((a)) the growth management hearings board may retain
15 scientific or other expert advice to assist in reviewing a petition
16 under RCW 36.70A.290 that involves critical areas.

17 **Sec. 4.** RCW 36.70A.250 and 1994 c 249 s 29 are each amended to
18 read as follows:

19 (1) There ((are hereby)) is created ((three)) a growth management
20 hearings board((s)) for the state of Washington. The ((boards shall be
21 established as follows:

22 (a) ~~An Eastern Washington board with jurisdictional boundaries~~
23 ~~including all counties that are required to or choose to plan under RCW~~
24 ~~36.70A.040 and are located east of the crest of the Cascade mountains;~~

25 (b) ~~A Central Puget Sound board with jurisdictional boundaries~~
26 ~~including King, Pierce, Snohomish, and Kitsap counties; and~~

27 (c) ~~A Western Washington board with jurisdictional boundaries~~
28 ~~including all counties that are required or choose to plan under RCW~~
29 ~~36.70A.040 and are located west of the crest of the Cascade mountains~~
30 ~~and are not included in the Central Puget Sound board jurisdictional~~
31 ~~boundaries. Skamania county, should it be required or choose to plan~~
32 ~~under RCW 36.70A.040, may elect to be included within the~~
33 ~~jurisdictional boundaries of either the Western or Eastern board.~~

34 (2) ~~Each board shall only hear matters pertaining to the cities and~~
35 ~~counties located within its jurisdictional boundaries)) board consists
36 of five members qualified by experience or training in matters~~

1 pertaining to land use planning. At least two members of the board
2 must be admitted to practice law in this state, one of whom must reside
3 east of the crest of the Cascade mountains. At least two members of
4 the board must have been a city or county elected official, one of whom
5 must reside east of the crest of the Cascade mountains. Each board
6 member must be appointed by the governor and not more than three
7 members at the time of appointment or during their term may be members
8 of the same political party. No more than two members at the time of
9 appointment or during their term may reside in the same county.

10 (2) Each member of the board must be appointed for a term of six
11 years. A vacancy must be filled by appointment by the governor for the
12 unexpired portion of the term in which the vacancy occurs. The terms
13 of the initial five members of the board must be staggered so that one
14 member is appointed to serve until July 1, 2010, two members until July
15 1, 2012, and two members until July 1, 2014. Of the initial five
16 members, at least three members must have been members of the growth
17 management hearings boards existing prior to the effective date of this
18 section.

19 **Sec. 5.** RCW 36.70A.270 and 1997 c 429 s 11 are each amended to
20 read as follows:

21 ~~((Each))~~ The growth management hearings board shall be governed by
22 the following rules on conduct and procedure:

23 (1) Any board member may be removed for inefficiency, malfeasance,
24 and misfeasance in office, under specific written charges filed by the
25 governor. The governor shall transmit such written charges to the
26 member accused and the chief justice of the supreme court. The chief
27 justice shall thereupon designate a tribunal composed of three judges
28 of the superior court to hear and adjudicate the charges. Removal of
29 any member of a board by the tribunal shall disqualify such member for
30 reappointment.

31 (2) Each board member shall receive reimbursement for travel
32 expenses incurred in the discharge of his or her duties in accordance
33 with RCW 43.03.050 and 43.03.060. If it is determined that the review
34 board(~~(s)~~) shall operate on a full-time basis, each member shall
35 receive an annual salary to be determined by the governor pursuant to
36 RCW 43.03.040. If it is determined that (~~(a)~~) the review board shall
37 operate on a part-time basis, each member shall receive compensation

1 pursuant to RCW 43.03.250, provided such amount shall not exceed the
2 amount that would be set if they were a full-time board member. The
3 (~~(principal)~~) office of (~~each~~) the board shall be located (~~(by the~~
4 ~~governor within the jurisdictional boundaries of each board)~~) in
5 Olympia. The board(~~(s)~~) shall operate on either a part-time or full-
6 time basis, as determined by the governor.

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

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

21 (5) The board may appoint one or more hearing examiners to assist
22 the board in its hearing function, to make conclusions of law and
23 findings of fact and, if requested by the board, to make
24 recommendations to the board for decisions in cases before the board.
25 Such hearing examiners must have demonstrated knowledge of land use
26 planning and law. The board(~~(s)~~) shall specify in (~~(their joint)~~) its
27 rules of practice and procedure, as required by subsection (7) of this
28 section, the procedure and criteria to be employed for designating
29 hearing examiners as a presiding officer. Hearing examiners selected
30 by (~~(a)~~) the board shall meet the requirements of subsection (3) of
31 this section. The findings and conclusions of the hearing examiner
32 shall not become final until they have been formally approved by the
33 board. This authorization to use hearing examiners does not waive the
34 requirement of RCW 36.70A.300 that final orders be issued within one
35 hundred eighty days of board receipt of a petition.

36 (6) (~~Each~~) The board shall make findings of fact and prepare a
37 written decision in each case decided by it, and such findings and
38 decision shall be effective upon being signed by (~~(two)~~) three or more

1 members of the board and upon being filed at the board's (~~principal~~)
2 office, and shall be open for public inspection at all reasonable
3 times.

4 (7) All proceedings before the board, any of its members, or a
5 hearing examiner appointed by the board shall be conducted in
6 accordance with such administrative rules of practice and procedure as
7 the board(~~s jointly~~) prescribes. (~~All three boards~~) The board
8 shall (~~jointly meet to~~) develop and adopt (~~joint~~) rules of practice
9 and procedure, including rules regarding expeditious and summary
10 disposition of appeals. The board(~~s~~) shall publish such rules and
11 decisions (~~they render~~) rendered and arrange for the reasonable
12 distribution of the rules and decisions. Except as it conflicts with
13 specific provisions of this chapter, the administrative procedure act,
14 chapter 34.05 RCW, and specifically including the provisions of RCW
15 34.05.455 governing ex parte communications, shall govern the practice
16 and procedure of the board(~~s~~).

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

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

26 **Sec. 6.** RCW 36.70A.280 and 2008 c 289 s 5 are each amended to read
27 as follows:

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

30 (a) That, except as provided otherwise by this subsection, a state
31 agency, county, or city planning under this chapter is not in
32 compliance with the requirements of this chapter, chapter 90.58 RCW as
33 it relates to the adoption of shoreline master programs or amendments
34 thereto, or chapter 43.21C RCW as it relates to plans, development
35 regulations, or amendments, adopted under RCW 36.70A.040 or chapter
36 90.58 RCW. Nothing in this subsection authorizes a board to hear
37 petitions alleging noncompliance with RCW 36.70A.5801; 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; (b) a person who has participated
6 orally or in writing before the county or city regarding the matter on
7 which a review is being requested; (c) a person who is certified by the
8 governor within sixty days of filing the request with the board; or (d)
9 a person qualified pursuant to RCW 34.05.530.

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

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

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

22 The rationale for any adjustment that is adopted by ((a)) the board
23 must be documented and filed with the office of financial management
24 within ten working days after adoption.

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

32 **Sec. 7.** RCW 36.70A.290 and 1997 c 429 s 12 are each amended to
33 read as follows:

34 (1) All requests for review to ((a)) the growth management hearings
35 board shall be initiated by filing a petition that includes a detailed
36 statement of issues presented for resolution by the board. The board
37 shall render written decisions articulating the basis for its holdings.

1 The board shall not issue advisory opinions on issues not presented to
2 the board in the statement of issues, as modified by any prehearing
3 order.

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

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

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

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

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

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

36 (4) The board shall base its decision on the record developed by
37 the city, county, or the state and supplemented with additional

1 evidence if the board determines that such additional evidence would be
2 necessary or of substantial assistance to the board in reaching its
3 decision.

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

7 **Sec. 8.** RCW 36.70A.295 and 1997 c 429 s 13 are each amended to
8 read as follows:

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

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

29 (3) For purposes of a petition that is subject to direct review,
30 the superior court's subject matter jurisdiction shall be equivalent to
31 that of the board. Consistent with the requirements of the superior
32 court civil rules, the superior court may consolidate a petition
33 subject to direct review under this section with a separate action
34 filed in the superior court.

35 (4)(a) Except as otherwise provided in (b) and (c) of this
36 subsection, the provisions of RCW 36.70A.280 through 36.70A.330, which

1 specify the nature and extent of board review, shall apply to the
2 superior court's review.

3 (b) The superior court:

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

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

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

11 (c) An aggrieved party may secure appellate review of a final
12 judgment of the superior court under this section by the supreme court
13 or the court of appeals. The review shall be secured in the manner
14 provided by law for review of superior court decisions in other civil
15 cases.

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

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

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

30 **Sec. 9.** RCW 36.70A.302 and 1997 c 429 s 16 are each amended to
31 read as follows:

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

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

36 (b) Includes in the final order a determination, supported by

1 findings of fact and conclusions of law, that the continued validity of
2 part or parts of the plan or regulation would substantially interfere
3 with the fulfillment of the goals of this chapter; and

4 (c) Specifies in the final order the particular part or parts of
5 the plan or regulation that are determined to be invalid, and the
6 reasons for their invalidity.

7 (2) A determination of invalidity is prospective in effect and does
8 not extinguish rights that vested under state or local law before
9 receipt of the board's order by the city or county. The determination
10 of invalidity does not apply to a completed development permit
11 application for a project that vested under state or local law before
12 receipt of the board's order by the county or city or to related
13 construction permits for that project.

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

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

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

29 (ii) A building permit and related construction permits for
30 remodeling, tenant improvements, or expansion of an existing structure
31 on a lot existing before receipt of the board's order by the county or
32 city; and

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

36 (4) If the ordinance that adopts a plan or development regulation
37 under this chapter includes a savings clause intended to revive prior
38 policies or regulations in the event the new plan or regulations are

1 determined to be invalid, the board shall determine under subsection
2 (1) of this section whether the prior policies or regulations are valid
3 during the period of remand.

4 (5) A county or city subject to a determination of invalidity may
5 adopt interim controls and other measures to be in effect until it
6 adopts a comprehensive plan and development regulations that comply
7 with the requirements of this chapter. A development permit
8 application may vest under an interim control or measure upon
9 determination by the board that the interim controls and other measures
10 do not substantially interfere with the fulfillment of the goals of
11 this chapter.

12 (6) A county or city subject to a determination of invalidity may
13 file a motion requesting that the board clarify, modify, or rescind the
14 order. The board shall expeditiously schedule a hearing on the motion.
15 At the hearing on the motion, the parties may present information to
16 the board to clarify the part or parts of the comprehensive plan or
17 development regulations to which the final order applies. The board
18 shall issue any supplemental order based on the information provided at
19 the hearing not later than thirty days after the date of the hearing.

20 (7)(a) If a determination of invalidity has been made and the
21 county or city has enacted an ordinance or resolution amending the
22 invalidated part or parts of the plan or regulation or establishing
23 interim controls on development affected by the order of invalidity,
24 after a compliance hearing, the board shall modify or rescind the
25 determination of invalidity if it determines under the standard in
26 subsection (1) of this section that the plan or regulation, as amended
27 or made subject to such interim controls, will no longer substantially
28 interfere with the fulfillment of the goals of this chapter.

29 (b) If the board determines that part or parts of the plan or
30 regulation are no longer invalid as provided in this subsection, but
31 does not find that the plan or regulation is in compliance with all of
32 the requirements of this chapter, the board, in its order, may require
33 periodic reports to the board on the progress the jurisdiction is
34 making towards compliance.

35 **Sec. 10.** RCW 36.70A.310 and 1994 c 249 s 32 are each amended to
36 read as follows:

37 A request for review by the state to ((a)) the growth management

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

11 **Sec. 11.** RCW 36.70A.3201 and 1997 c 429 s 2 are each amended to
12 read as follows:

13 ~~((In amending RCW 36.70A.320(3) by section 20(3), chapter 429, Laws~~
14 ~~of 1997,))~~ The legislature intends that the board((~~s~~)) apply a ((~~more~~))
15 deferential standard of review to actions of counties and cities than
16 the preponderance of the evidence standard provided for under existing
17 law. In recognition of the broad range of discretion that may be
18 exercised by counties and cities consistent with the requirements of
19 this chapter, the legislature intends for the board((~~s~~)) to grant
20 deference to counties and cities in how they plan for growth,
21 consistent with the requirements and goals of this chapter. Local
22 comprehensive plans and development regulations require counties and
23 cities to balance priorities and options for action in full
24 consideration of local circumstances. The legislature finds that while
25 this chapter requires local planning to take place within a framework
26 of state goals and requirements, the ultimate burden and responsibility
27 for planning, harmonizing the planning goals of this chapter, and
28 implementing a county's or city's future rests with that community.

29 **Sec. 12.** RCW 36.70A.345 and 1994 c 249 s 33 are each amended to
30 read as follows:

31 The governor may impose a sanction or sanctions specified under RCW
32 36.70A.340 on: (1) A county or city that fails to designate critical
33 areas, agricultural lands, forest lands, or mineral resource lands
34 under RCW 36.70A.170 by the date such action was required to have been
35 taken; (2) a county or city that fails to adopt development regulations
36 under RCW 36.70A.060 protecting critical areas or conserving

1 agricultural lands, forest lands, or mineral resource lands by the date
2 such action was required to have been taken; (3) a county that fails to
3 designate urban growth areas under RCW 36.70A.110 by the date such
4 action was required to have been taken; and (4) a county or city that
5 fails to adopt its comprehensive plan or development regulations when
6 such actions are required to be taken.

7 Imposition of a sanction or sanctions under this section shall be
8 preceded by written findings by the governor, that either the county or
9 city is not proceeding in good faith to meet the requirements of the
10 act; or that the county or city has unreasonably delayed taking the
11 required action. The governor shall consult with and communicate his
12 or her findings to the ((appropriate)) growth management hearings board
13 prior to imposing the sanction or sanctions. For those counties or
14 cities that are not required to plan or have not opted in, the governor
15 in imposing sanctions shall consider the size of the jurisdiction
16 relative to the requirements of this chapter and the degree of
17 technical and financial assistance provided.

18 **Sec. 13.** RCW 90.58.190 and 2003 c 321 s 4 are each amended to read
19 as follows:

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

23 (2)(a) The department's decision to approve, reject, or modify a
24 proposed master program or amendment adopted by a local government
25 planning under RCW 36.70A.040 shall be appealed to the growth
26 management hearings board ((with jurisdiction over the local
27 government)). The appeal shall be initiated by filing a petition as
28 provided in RCW 36.70A.250 through 36.70A.320.

29 (b) If the appeal to the growth management hearings board concerns
30 shorelines, the growth management hearings board shall review the
31 proposed master program or amendment solely for compliance with the
32 requirements of this chapter, the policy of RCW 90.58.020 and the
33 applicable guidelines, the internal consistency provisions of RCW
34 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter
35 43.21C RCW as it relates to the adoption of master programs and
36 amendments under chapter 90.58 RCW.

1 (c) If the appeal to the growth management hearings board concerns
2 a shoreline of statewide significance, the board shall uphold the
3 decision by the department unless the board, by clear and convincing
4 evidence, determines that the decision of the department is
5 inconsistent with the policy of RCW 90.58.020 and the applicable
6 guidelines.

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

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

12 (3)(a) The department's decision to approve, reject, or modify a
13 proposed master program or master program amendment by a local
14 government not planning under RCW 36.70A.040 shall be appealed to the
15 shorelines hearings board by filing a petition within thirty days of
16 the date of the department's written notice to the local government of
17 the department's decision to approve, reject, or modify a proposed
18 master program or master program amendment as provided in RCW
19 90.58.090(2).

20 (b) In an appeal relating to shorelines, the shorelines hearings
21 board shall review the proposed master program or master program
22 amendment and, after full consideration of the presentations of the
23 local government and the department, shall determine the validity of
24 the local government's master program or amendment in light of the
25 policy of RCW 90.58.020 and the applicable guidelines.

26 (c) In an appeal relating to shorelines of statewide significance,
27 the shorelines hearings board shall uphold the decision by the
28 department unless the board determines, by clear and convincing
29 evidence that the decision of the department is inconsistent with the
30 policy of RCW 90.58.020 and the applicable guidelines.

31 (d) Review by the shorelines hearings board shall be considered an
32 adjudicative proceeding under chapter 34.05 RCW, the administrative
33 procedure act. The aggrieved local government shall have the burden of
34 proof in all such reviews.

35 (e) Whenever possible, the review by the shorelines hearings board
36 shall be heard within the county where the land subject to the proposed
37 master program or master program amendment is primarily located. The

1 department and any local government aggrieved by a final decision of
2 the hearings board may appeal the decision to superior court as
3 provided in chapter 34.05 RCW.

4 (4) A master program amendment shall become effective after the
5 approval of the department or after the decision of the shorelines
6 hearings board to uphold the master program or master program
7 amendment, provided that the board may remand the master program or
8 master program adjustment to the local government or the department for
9 modification prior to the final adoption of the master program or
10 master program amendment.

11 **Sec. 14.** RCW 34.05.518 and 2003 c 393 s 16 are each amended to
12 read as follows:

13 (1) The final decision of an administrative agency in an
14 adjudicative proceeding under this chapter may, except as otherwise
15 provided in chapter 43.21L RCW, be directly reviewed by the court of
16 appeals either (a) upon certification by the superior court pursuant to
17 this section or (b) if the final decision is from an environmental
18 board as defined in subsection (3) of this section, upon acceptance by
19 the court of appeals after a certificate of appealability has been
20 filed by the environmental board that rendered the final decision.

21 (2) For direct review upon certification by the superior court, an
22 application for direct review must be filed with the superior court
23 within thirty days of the filing of the petition for review in superior
24 court. The superior court may certify a case for direct review only if
25 the judicial review is limited to the record of the agency proceeding
26 and the court finds that:

27 (a) Fundamental and urgent issues affecting the future
28 administrative process or the public interest are involved which
29 require a prompt determination;

30 (b) Delay in obtaining a final and prompt determination of such
31 issues would be detrimental to any party or the public interest;

32 (c) An appeal to the court of appeals would be likely regardless of
33 the determination in superior court; and

34 (d) The appellate court's determination in the proceeding would
35 have significant precedential value.

36 Procedures for certification shall be established by court rule.

1 (3)(a) For the purposes of direct review of final decisions of
2 environmental boards, environmental boards include those boards
3 identified in RCW 43.21B.005 and the growth management hearings
4 board((s)) as identified in RCW 36.70A.250.

5 (b) An environmental board may issue a certificate of appealability
6 if it finds that delay in obtaining a final and prompt determination of
7 the issues would be detrimental to any party or the public interest and
8 either:

9 (i) Fundamental and urgent statewide or regional issues are raised;
10 or

11 (ii) The proceeding is likely to have significant precedential
12 value.

13 (4) The environmental board shall state in the certificate of
14 appealability which criteria it applied, explain how that criteria was
15 met, and file with the certificate a copy of the final decision.

16 (5) For an appellate court to accept direct review of a final
17 decision of an environmental board, it shall consider the same criteria
18 outlined in subsection (3) of this section, except as otherwise
19 provided in chapter 43.21L RCW.

20 (6) The procedures for direct review of final decisions of
21 environmental boards include:

22 (a) Within thirty days after filing the petition for review with
23 the superior court, a party may file an application for direct review
24 with the superior court and serve the appropriate environmental board
25 and all parties of record. The application shall request the
26 environmental board to file a certificate of appealability.

27 (b) If an issue on review is the jurisdiction of the environmental
28 board, the board may file an application for direct review on that
29 issue.

30 (c) The environmental board shall have thirty days to grant or deny
31 the request for a certificate of appealability and its decision shall
32 be filed with the superior court and served on all parties of record.

33 (d) If a certificate of appealability is issued, the parties shall
34 have fifteen days from the date of service to file a notice of
35 discretionary review in the superior court, and the notice shall
36 include a copy of the certificate of appealability and a copy of the
37 final decision.

1 (e) If the appellate court accepts review, the certificate of
2 appealability shall be transmitted to the court of appeals as part of
3 the certified record.

4 (f) If a certificate of appealability is denied, review shall be by
5 the superior court. The superior court's decision may be appealed to
6 the court of appeals.

7 **Sec. 15.** RCW 34.12.020 and 2002 c 354 s 226 are each amended to
8 read as follows:

9 (~~Unless the context clearly requires otherwise,~~) The definitions
10 in this section apply throughout this chapter unless the context
11 clearly requires otherwise.

12 (1) "Office" means the office of administrative hearings.

13 (2) "Administrative law judge" means any person appointed by the
14 chief administrative law judge to conduct or preside over hearings as
15 provided in this chapter.

16 (3) "Hearing" means an adjudicative proceeding within the meaning
17 of RCW 34.05.010(1) conducted by a state agency under RCW 34.05.413
18 through 34.05.476.

19 (4) "State agency" means any state board, commission, department,
20 or officer authorized by law to make rules or to conduct adjudicative
21 proceedings, except those in the legislative or judicial branches, the
22 growth management hearings board(~~(s)~~), the utilities and transportation
23 commission, the pollution control hearings board, the shorelines
24 hearings board, the forest practices appeals board, the environmental
25 hearings office, the board of industrial insurance appeals, the
26 Washington personnel resources board, the public employment relations
27 commission, and the board of tax appeals.

28 NEW SECTION. **Sec. 16.** (1) The three regional growth management
29 hearings boards are hereby abolished and their powers, duties, and
30 functions are hereby transferred to the growth management hearings
31 board.

32 (2)(a) All reports, documents, surveys, books, records, files,
33 papers, or written material in the possession of the regional growth
34 management hearings boards shall be delivered to the custody of the
35 growth management hearings board. All cabinets, furniture, office
36 equipment, motor vehicles, and other tangible property employed by the

1 regional growth management hearings boards shall be made available to
2 the growth management hearings board. All funds, credits, or other
3 assets held by the regional growth management hearings boards shall be
4 assigned to the growth management hearings board.

5 (b) Any appropriations made to the regional growth management
6 hearings boards shall, on the effective date of this section, be
7 transferred and credited to the growth management hearings board.

8 (c) If any question arises as to the transfer of any personnel,
9 funds, books, documents, records, papers, files, equipment, or other
10 tangible property used or held in the exercise of the powers and the
11 performance of the duties and functions transferred, the director of
12 financial management shall make a determination as to the proper
13 allocation and certify the same to the state agencies concerned.

14 (3) All employees of the regional growth management hearings boards
15 are transferred to the jurisdiction of the growth management hearings
16 board. All employees classified under chapter 41.06 RCW, the state
17 civil service law, are assigned to the growth management hearings board
18 to perform their usual duties upon the same terms as formerly, without
19 any loss of rights, subject to any action that may be appropriate
20 thereafter in accordance with the laws and rules governing state civil
21 service.

22 (4) All rules and all pending business before the regional growth
23 management hearings boards shall be continued and acted upon by the
24 growth management hearings board. All existing contracts and
25 obligations shall remain in full force and shall be performed by the
26 growth management hearings board.

27 (5) The transfer of the powers, duties, functions, and personnel of
28 the regional growth management hearings boards shall not affect the
29 validity of any act performed before the effective date of this
30 section.

31 (6) Nothing contained in this section may be construed to alter any
32 existing collective bargaining unit or the provisions of any existing
33 collective bargaining agreement until the agreement has expired or
34 until the bargaining unit has been modified by action of the public
35 employment relations commission as provided by law.

36 NEW SECTION. **Sec. 17.** RCW 36.70A.260 (Growth management hearings

1 boards--Qualifications) and 1994 c 249 s 30 & 1991 sp.s. c 32 s 6 are
2 each repealed.

3 NEW SECTION. **Sec. 18.** This act takes effect September 1, 2009.

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