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**SUBSTITUTE HOUSE BILL 2416**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

**By** House Committee on Government Operations (originally sponsored by Representatives Horn and Boldt)

Read first time 01/19/96.

1 AN ACT Relating to growth management hearings boards; amending RCW  
2 36.70A.270, 36.70A.280, 36.70A.290, 36.70A.300, 36.70A.310, 36.70A.320,  
3 and 36.70A.340; recodifying RCW 36.70A.340; and repealing RCW  
4 36.70A.330.

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

6 **Sec. 1.** RCW 36.70A.270 and 1994 c 257 s 1 are each amended to read  
7 as follows:

8 Each growth ((~~planning~~)) management hearings board shall be  
9 governed by the following rules on conduct and procedure:

10 (1) Any board member may be removed for inefficiency, malfeasance,  
11 and misfeasance in office, under specific written charges filed by the  
12 governor. The governor shall transmit such written charges to the  
13 member accused and the chief justice of the supreme court. The chief  
14 justice shall thereupon designate a tribunal composed of three judges  
15 of the superior court to hear and adjudicate the charges. Removal of  
16 any member of a board by the tribunal shall disqualify such member for  
17 reappointment.

18 (2) Each board member shall receive reimbursement for travel  
19 expenses incurred in the discharge of his or her duties in accordance

1 with RCW 43.03.050 and 43.03.060. If it is determined that the review  
2 boards shall operate on a full-time basis, each member shall receive an  
3 annual salary to be determined by the governor pursuant to RCW  
4 43.03.040. If it is determined that a review board shall operate on a  
5 part-time basis, each member shall receive compensation pursuant to RCW  
6 43.03.250, provided such amount shall not exceed the amount that would  
7 be set if they were a full-time board member. The principal office of  
8 each board shall be located by the governor within the jurisdictional  
9 boundaries of each board. The boards shall operate on either a part-  
10 time or full-time basis, as determined by the governor.

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

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

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

1 board may mediate disputes between counties or cities, over whether  
2 their comprehensive plans are coordinated or consistent, by using one  
3 or more of its own members, hiring staff to provide mediation, or  
4 contracting for the provision of mediation.

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

10 (7) All proceedings before the board, any of its members, or a  
11 hearing examiner appointed by the board shall be conducted in  
12 accordance with such administrative rules of practice and procedure as  
13 the boards jointly prescribe. All three boards shall jointly meet to  
14 develop and adopt joint rules of practice and procedure, including  
15 rules regarding expeditious and summary disposition of appeals. The  
16 boards shall publish such rules and arrange for the reasonable  
17 distribution of the rules. The administrative procedure act, chapter  
18 34.05 RCW, shall govern the administrative rules of practice and  
19 procedure adopted by the boards.

20 (8) A board member or hearing examiner is subject to  
21 disqualification for bias, prejudice, interest, or any other cause for  
22 which a judge is disqualified. The joint rules of practice of the  
23 boards shall establish procedures by which a party to a hearing  
24 conducted before the board may file with the board a motion to  
25 disqualify, with supporting affidavit, against a board member or  
26 hearing examiner assigned to preside at the hearing.

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

30 **Sec. 2.** RCW 36.70A.280 and 1995 c 347 s 108 are each amended to  
31 read as follows:

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

34 (a) That a (~~state agency,~~) county(~~(,)~~) or city planning under  
35 this chapter is not in compliance with the requirements of (~~this~~  
36 ~~chapter,~~) chapter 90.58 RCW as it relates to the adoption of shoreline  
37 master programs or amendments thereto, or chapter 43.21C RCW as it  
38 relates to (~~plans, development regulations, or amendments, adopted~~

1 ~~under RCW 36.70A.040 or chapter 90.58 RCW))~~ the shoreline master  
2 programs or amendments thereto; or

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

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

11 (d) That the comprehensive plan of a county or city adopted under  
12 this chapter is not coordinated with, or consistent with, the  
13 comprehensive plan of another county or city, as required under RCW  
14 36.70A.100; or

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

18 (2) A petition alleging that a county or city has not addressed  
19 issues associated with an action required under this chapter, or that  
20 the comprehensive plan of a county or city is not coordinated with or  
21 consistent with another comprehensive plan as required under RCW  
22 36.70A.100, may be filed only by the state, a county or city that plans  
23 under this chapter, a person who has either appeared before the county  
24 or city regarding the matter on which a review is being requested or is  
25 certified by the governor within sixty days of filing the request with  
26 the board, or a person qualified pursuant to RCW 34.05.530. A petition  
27 alleging that a county or city has not taken an action required under  
28 this chapter, by the time such action is required to have been taken,  
29 may be filed by any person. A petition alleging that the shoreline  
30 master program or amendments thereto, or chapter 43.21C RCW as it  
31 relates thereto, may be filed by a person with standing under chapter  
32 43.21C RCW.

33 (3) For purposes of this section "person" means any individual,  
34 partnership, corporation, association, governmental subdivision or unit  
35 thereof, or public or private organization or entity of any character.

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

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

4 If adjusted by a board, a county growth management planning  
5 population projection shall only be used for the planning purposes set  
6 forth in this chapter and shall be known as a "board adjusted  
7 population projection". None of these changes shall affect the  
8 official state and county population forecasts prepared by the office  
9 of financial management, which shall continue to be used for state  
10 budget and planning purposes.))

11 **Sec. 3.** RCW 36.70A.290 and 1995 c 347 s 109 are each amended to  
12 read as follows:

13 (1) All requests for review to a growth management hearings board  
14 shall be initiated by filing a petition that includes a detailed  
15 statement of issues presented for resolution by the board.

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

33 ((a) Except as provided in (c) of this subsection,) The date of  
34 publication for a city shall be the date the city publishes the  
35 ordinance, or summary of the ordinance, adopting the comprehensive plan  
36 or development regulations, or amendment thereto, as is required to be  
37 published.

1       (~~(b)~~) Promptly after adoption, a county shall publish a notice  
2 that it has adopted the comprehensive plan or development regulations,  
3 or amendment thereto. (~~Except as provided in (c) of this subsection,~~  
4 ~~for purposes of this section~~) The date of publication for a county  
5 shall be the date the county publishes the notice that it has adopted  
6 the comprehensive plan or development regulations, or amendment  
7 thereto.

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

18       (3) Unless the board dismisses the petition as frivolous or finds  
19 that the person filing the petition lacks standing, the board shall,  
20 within ten days of receipt of the petition, set a time for hearing the  
21 matter.

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

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

30       **Sec. 4.** RCW 36.70A.300 and 1995 c 347 s 110 are each amended to  
31 read as follows:

32       (1) The board shall (~~issue a final order~~) render its decision  
33 within one hundred eighty days of receipt of the petition for review,  
34 or, when multiple petitions are filed, within one hundred eighty days  
35 of receipt of the last petition that is consolidated. (~~Such a final~~  
36 ~~order shall be based exclusively on whether or not a state agency,~~  
37 ~~county, or city is in compliance with the requirements of this chapter,~~  
38 ~~chapter 90.58 RCW as it relates to adoption or amendment of shoreline~~

1 ~~master programs, or chapter 43.21C RCW as it relates to plans,~~  
2 ~~development regulations, and amendments thereto, adopted under RCW~~  
3 ~~36.70A.040 or chapter 90.58 RCW.)~~ In ~~((the final order))~~ rendering  
4 its decision, the board shall ~~((either))~~:

5 (a) Find that the ~~((state agency,))~~ county~~((,))~~ or city is in  
6 compliance with the requirements of ~~((this chapter or))~~ chapter 90.58  
7 RCW as it relates to the adoption or amendment of shoreline master  
8 programs; or

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

11 (c) Find that the ((state agency,)) county((,)) or city ((is not in  
12 compliance with the requirements of this chapter or chapter 90.58 RCW  
13 as it relates to the adoption or amendment of shoreline master  
14 programs, in which case)) either has, or has not, addressed relevant  
15 issues associated with an action required under this chapter, but may  
16 not consider the adequacy of the actions taken by the county or city.  
17 If the board finds that the county or city has not addressed the  
18 relevant issues, the board shall ((remand the matter to the affected  
19 state agency, county, or city and)) specify a reasonable time not in  
20 excess of one hundred eighty days within which the ((state agency,))  
21 county((,)) or city and the person or persons appealing the action  
22 shall ((comply with the requirements of this chapter.

23 (2) ~~A finding of noncompliance and an order of remand shall not~~  
24 ~~affect the validity of comprehensive plans and development regulations~~  
25 ~~during the period of remand, unless the board's final order also:~~

26 (a) ~~Includes a determination, supported by findings of fact and~~  
27 ~~conclusions of law, that the continued validity of the plan or~~  
28 ~~regulation would substantially interfere with the fulfillment of the~~  
29 ~~goals of this chapter; and~~

30 (b) ~~Specifies the particular part or parts of the plan or~~  
31 ~~regulation that are determined to be invalid, and the reasons for their~~  
32 ~~invalidity.~~

33 (3) ~~A determination of invalidity shall:~~

34 (a) ~~Be prospective in effect and shall not extinguish rights that~~  
35 ~~vested under state or local law before the date of the board's order;~~  
36 ~~and~~

37 (b) ~~Subject any development application that would otherwise vest~~  
38 ~~after the date of the board's order to the local ordinance or~~  
39 ~~resolution that both is enacted in response to the order of remand and~~

1 determined by the board pursuant to RCW 36.70A.330 to comply with the  
2 requirements of this chapter.

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

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

13 ~~(d) Find that the comprehensive plans either are, or are not,  
14 coordinated or consistent, as required under RCW 36.70A.100. If the  
15 board finds that the comprehensive plans are not coordinated or  
16 consistent, the board shall mediate between the affected counties or  
17 cities to resolve the lack of coordination or lack of consistency.~~

18 ~~(2) Nothing in RCW 36.70A.250 through 36.70A.345 precludes an  
19 aggrieved party from filing a law suit seeking equitable relief against  
20 a county or city for failing to comply with the requirements of this  
21 chapter or seeking other remedies that may exist challenging the  
22 actions of a county or city taken under this chapter.~~

23 **Sec. 5.** RCW 36.70A.310 and 1994 c 249 s 32 are each amended to  
24 read as follows:

25 A request for review by the state to a growth management hearings  
26 board under RCW 36.70A.280(1) may be made only by the governor, or with  
27 the governor's consent the head of an agency, or by the commissioner of  
28 public lands as relating to state trust lands(~~(, for the review of  
29 whether: (1) A county or city that is required or chooses to plan  
30 under RCW 36.70A.040 has failed to adopt a comprehensive plan or  
31 development regulations, or county wide planning policies within the  
32 time limits established by this chapter; or (2) a county or city that  
33 is required or chooses to plan under this chapter has adopted a  
34 comprehensive plan, development regulations, or county wide planning  
35 policies, that are not in compliance with the requirements of this  
36 chapter))~~).

1       **Sec. 6.** RCW 36.70A.320 and 1995 c 347 s 111 are each amended to  
2 read as follows:

3       (~~((1) Except as provided in subsection (2) of this section,))~~  
4 Comprehensive plans and development regulations, and amendments  
5 thereto, adopted under this chapter are presumed valid upon adoption.  
6 In any petition under this chapter, the board, after full consideration  
7 of the petition, shall ((determine whether there is compliance with the  
8 requirements of this chapter. In making its determination, the board  
9 shall consider the criteria adopted by the department under RCW  
10 36.70A.190(4). The board shall find compliance unless it finds by a  
11 preponderance of the evidence that the state agency, county, or city  
12 erroneously interpreted or applied this chapter.

13       ~~(2) The shoreline element of a comprehensive plan and the~~  
14 ~~applicable development regulations adopted by a county or city shall~~  
15 ~~take effect as provided in chapter 90.58 RCW))~~ render its decision.

16       **Sec. 7.** RCW 36.70A.340 and 1991 sp.s. c 32 s 26 are each amended  
17 to read as follows:

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

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

24       (2) Notify and direct the state treasurer to withhold the portion  
25 of revenues to which the county or city is entitled under one or more  
26 of the following: The motor vehicle fuel tax, as provided in chapter  
27 82.36 RCW; the transportation improvement account, as provided in RCW  
28 47.26.084; the urban arterial trust account, as provided in RCW  
29 47.26.080; the rural arterial trust account, as provided in RCW  
30 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the  
31 liquor profit tax, as provided in RCW 66.08.190; and the liquor excise  
32 tax, as provided in RCW 82.08.170; or

33       (3) File a notice of noncompliance with the secretary of state and  
34 the county or city, which shall temporarily rescind the county or  
35 city's authority to collect the real estate excise tax under RCW  
36 82.46.030 until the governor files a notice rescinding the notice of  
37 noncompliance.

1        NEW SECTION.    **Sec. 8.**    RCW 36.70A.330 and 1995 c 347 s 112 & 1991  
2 sp.s. c 32 s 14 are each repealed.

3        NEW SECTION.    **Sec. 9.**    The code reviser shall recodify RCW  
4 36.70A.340 to appear immediately after RCW 36.70A.345.

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