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**SUBSTITUTE HOUSE BILL 2442**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** House Local Government & Housing (originally sponsored by Representatives Simpson, Hinkle, White, Kenney, Lias, Springer, Warnick, Roberts, Upthegrove, Williams, Hunt, Hudgins, Eddy, Darneille, Nelson, Chase, Sullivan, Kagi, Sells, Goodman, and Jacks; by request of Growth Management Hearings Board)

READ FIRST TIME 01/21/10.

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

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

8       **Sec. 1.** RCW 36.70A.110 and 2009 c 342 s 1 and 2009 c 121 s 1 are  
9 each reenacted and amended to read 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 As part of this planning process, each city within the county must  
10 include areas sufficient to accommodate the broad range of needs and  
11 uses that will accompany the projected urban growth including, as  
12 appropriate, medical, governmental, institutional, commercial, service,  
13 retail, and other nonresidential uses.

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

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

1 the urban growth area within which it is located. Where appropriate,  
2 the department shall attempt to resolve the conflicts, including the  
3 use of mediation services.

4 (3) Urban growth should be located first in areas already  
5 characterized by urban growth that have adequate existing public  
6 facility and service capacities to serve such development, second in  
7 areas already characterized by urban growth that will be served  
8 adequately by a combination of both existing public facilities and  
9 services and any additional needed public facilities and services that  
10 are provided by either public or private sources, and third in the  
11 remaining portions of the urban growth areas. Urban growth may also be  
12 located in designated new fully contained communities as defined by RCW  
13 36.70A.350.

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

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

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

1 (7) An urban growth area designated in accordance with this section  
2 may include within its boundaries urban service areas or potential  
3 annexation areas designated for specific cities or towns within the  
4 county.

5 (8)(a) Except as provided in (b) of this subsection, the expansion  
6 of an urban growth area is prohibited into the one hundred year  
7 floodplain of any river or river segment that: (i) Is located west of  
8 the crest of the Cascade mountains; and (ii) has a mean annual flow of  
9 one thousand or more cubic feet per second as determined by the  
10 department of ecology.

11 (b) Subsection (8)(a) of this section does not apply to:

12 (i) Urban growth areas that are fully contained within a floodplain  
13 and lack adjacent buildable areas outside the floodplain;

14 (ii) Urban growth areas where expansions are precluded outside  
15 floodplains because:

16 (A) Urban governmental services cannot be physically provided to  
17 serve areas outside the floodplain; or

18 (B) Expansions outside the floodplain would require a river or  
19 estuary crossing to access the expansion; or

20 (iii) Urban growth area expansions where:

21 (A) Public facilities already exist within the floodplain and the  
22 expansion of an existing public facility is only possible on the land  
23 to be included in the urban growth area and located within the  
24 floodplain; or

25 (B) Urban development already exists within a floodplain as of July  
26 26, 2009, and is adjacent to, but outside of, the urban growth area,  
27 and the expansion of the urban growth area is necessary to include such  
28 urban development within the urban growth area; or

29 (C) The land is owned by a jurisdiction planning under this chapter  
30 or the rights to the development of the land have been permanently  
31 extinguished, and the following criteria are met:

32 (I) The permissible use of the land is limited to one of the  
33 following: Outdoor recreation; environmentally beneficial projects,  
34 including but not limited to habitat enhancement or environmental  
35 restoration; storm water facilities; flood control facilities; or  
36 underground conveyances; and

37 (II) The development and use of such facilities or projects will

1 not decrease flood storage, increase storm water runoff, discharge  
2 pollutants to fresh or salt waters during normal operations or floods,  
3 or increase hazards to people and property.

4 (c) For the purposes of this subsection (8), "one hundred year  
5 floodplain" means the same as "special flood hazard area" as set forth  
6 in WAC 173-158-040 as it exists on July 26, 2009.

7 **Sec. 2.** RCW 36.70A.130 and 2009 c 479 s 23 are each amended to  
8 read as follows:

9 (1)(a) Each comprehensive land use plan and development regulations  
10 shall be subject to continuing review and evaluation by the county or  
11 city that adopted them. Except as otherwise provided, a county or city  
12 shall take legislative action to review and, if needed, revise its  
13 comprehensive land use plan and development regulations to ensure the  
14 plan and regulations comply with the requirements of this chapter  
15 according to the time periods specified in subsection (4) of this  
16 section.

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

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

35 (d) Any amendment of or revision to a comprehensive land use plan  
36 shall conform to this chapter. Any amendment of or revision to

1 development regulations shall be consistent with and implement the  
2 comprehensive plan.

3 (2)(a) Each county and city shall establish and broadly disseminate  
4 to the public a public participation program consistent with RCW  
5 36.70A.035 and 36.70A.140 that identifies procedures and schedules  
6 whereby updates, proposed amendments, or revisions of the comprehensive  
7 plan are considered by the governing body of the county or city no more  
8 frequently than once every year. "Updates" means to review and revise,  
9 if needed, according to subsection (1) of this section, and the time  
10 periods specified in subsection (4) of this section or in accordance  
11 with the provisions of subsections (5) and (8) of this section.  
12 Amendments may be considered more frequently than once per year under  
13 the following circumstances:

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

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

18 (iii) The amendment of the capital facilities element of a  
19 comprehensive plan that occurs concurrently with the adoption or  
20 amendment of a county or city budget;

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

25 (v) The adoption of comprehensive plan amendments necessary to  
26 enact a planned action under RCW 43.21C.031(2), provided that  
27 amendments are considered in accordance with the public participation  
28 program established by the county or city under this subsection (2)(a)  
29 and all persons who have requested notice of a comprehensive plan  
30 update are given notice of the amendments and an opportunity to  
31 comment.

32 (b) Except as otherwise provided in (a) of this subsection, all  
33 proposals shall be considered by the governing body concurrently so the  
34 cumulative effect of the various proposals can be ascertained.  
35 However, after appropriate public participation a county or city may  
36 adopt amendments or revisions to its comprehensive plan that conform  
37 with this chapter whenever an emergency exists or to resolve an appeal

1 of a comprehensive plan filed with ((a)) the growth management hearings  
2 board or with the court.

3 (3)(a) Each county that designates urban growth areas under RCW  
4 36.70A.110 shall review, at least every ten years, its designated urban  
5 growth area or areas, and the densities permitted within both the  
6 incorporated and unincorporated portions of each urban growth area. In  
7 conjunction with this review by the county, each city located within an  
8 urban growth area shall review the densities permitted within its  
9 boundaries, and the extent to which the urban growth occurring within  
10 the county has located within each city and the unincorporated portions  
11 of the urban growth areas.

12 (b) The county comprehensive plan designating urban growth areas,  
13 and the densities permitted in the urban growth areas by the  
14 comprehensive plans of the county and each city located within the  
15 urban growth areas, shall be revised to accommodate the urban growth  
16 projected to occur in the county for the succeeding twenty-year period.  
17 The review required by this subsection may be combined with the review  
18 and evaluation required by RCW 36.70A.215.

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

26 (a) On or before December 1, 2004, and every seven years  
27 thereafter, for Clallam, Clark, Jefferson, King, Kitsap, Pierce,  
28 Snohomish, Thurston, and Whatcom counties and the cities within those  
29 counties;

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

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

36 (d) On or before December 1, 2007, and every seven years  
37 thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield,

1 Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille,  
2 Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities  
3 within those counties.

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

10 (b) A county that is subject to a schedule established by the  
11 department under subsection (4)(b) through (d) of this section and  
12 meets the following criteria may comply with the requirements of this  
13 section at any time within the thirty-six months following the date  
14 established in the applicable schedule: The county has a population of  
15 less than fifty thousand and has had its population increase by no more  
16 than seventeen percent in the ten years preceding the date established  
17 in the applicable schedule as of that date.

18 (c) A city that is subject to a schedule established by the  
19 department under subsection (4)(b) through (d) of this section and  
20 meets the following criteria may comply with the requirements of this  
21 section at any time within the thirty-six months following the date  
22 established in the applicable schedule: The city has a population of  
23 no more than five thousand and has had its population increase by the  
24 greater of either no more than one hundred persons or no more than  
25 seventeen percent in the ten years preceding the date established in  
26 the applicable schedule as of that date.

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

30 (6) A county or city subject to the time periods in subsection  
31 (4)(a) of this section that, pursuant to an ordinance adopted by the  
32 county or city establishing a schedule for periodic review of its  
33 comprehensive plan and development regulations, has conducted a review  
34 and evaluation of its comprehensive plan and development regulations  
35 and, on or after January 1, 2001, has taken action in response to that  
36 review and evaluation shall be deemed to have conducted the first  
37 review required by subsection (4)(a) of this section. Subsequent



1 review and evaluation by the county or city of its comprehensive plan  
2 and development regulations shall be conducted in accordance with the  
3 time periods established under subsection (4)(a) of this section.

4 (7) The requirements imposed on counties and cities under this  
5 section shall be considered "requirements of this chapter" under the  
6 terms of RCW 36.70A.040(1). Only those counties and cities: (a)  
7 Complying with the schedules in this section; (b) demonstrating  
8 substantial progress towards compliance with the schedules in this  
9 section for development regulations that protect critical areas; or (c)  
10 complying with the extension provisions of subsection (5)(b) or (c) of  
11 this section may receive grants, loans, pledges, or financial  
12 guarantees under chapter 43.155 or 70.146 RCW. A county or city that  
13 is fewer than twelve months out of compliance with the schedules in  
14 this section for development regulations that protect critical areas is  
15 making substantial progress towards compliance. Only those counties  
16 and cities in compliance with the schedules in this section may receive  
17 preference for grants or loans subject to the provisions of RCW  
18 43.17.250.

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

21 (a) Counties and cities required to satisfy the requirements of  
22 this section according to the schedule established by subsection (4)(b)  
23 through (d) of this section may comply with the requirements of this  
24 section for development regulations that protect critical areas one  
25 year after the dates established in subsection (4)(b) through (d) of  
26 this section;

27 (b) Counties and cities complying with the requirements of this  
28 section one year after the dates established in subsection (4)(b)  
29 through (d) of this section for development regulations that protect  
30 critical areas shall be deemed in compliance with the requirements of  
31 this section; and

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

37 (9) Notwithstanding subsection (8) of this section and the  
38 substantial progress provisions of subsections (7) and (10) of this

1 section, only those counties and cities complying with the schedule in  
2 subsection (4) of this section, or the extension provisions of  
3 subsection (5)(b) or (c) of this section, may receive preferences for  
4 grants, loans, pledges, or financial guarantees under chapter 43.155 or  
5 70.146 RCW.

6 (10) Until December 1, 2005, and notwithstanding subsection (7) of  
7 this section, a county or city subject to the time periods in  
8 subsection (4)(a) of this section demonstrating substantial progress  
9 towards compliance with the schedules in this section for its  
10 comprehensive land use plan and development regulations may receive  
11 grants, loans, pledges, or financial guarantees under chapter 43.155 or  
12 70.146 RCW. A county or city that is fewer than twelve months out of  
13 compliance with the schedules in this section for its comprehensive  
14 land use plan and development regulations is deemed to be making  
15 substantial progress towards compliance.

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

18 (1) In designating and protecting critical areas under this  
19 chapter, counties and cities shall include the best available science  
20 in developing policies and development regulations to protect the  
21 functions and values of critical areas. In addition, counties and  
22 cities shall give special consideration to conservation or protection  
23 measures necessary to preserve or enhance anadromous fisheries.

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

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

31 ~~((1) There are hereby created three growth management hearings~~  
32 ~~boards for the state of Washington. The boards shall be established as~~  
33 ~~follows:~~

34 ~~(a) An Eastern Washington board with jurisdictional boundaries~~  
35 ~~including all counties that are required to or choose to plan under RCW~~  
36 ~~36.70A.040 and are located east of the crest of the Cascade mountains;~~

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

3       ~~(c) A Western Washington board with jurisdictional boundaries~~  
4 ~~including all counties that are required or choose to plan under RCW~~  
5 ~~36.70A.040 and are located west of the crest of the Cascade mountains~~  
6 ~~and are not included in the Central Puget Sound board jurisdictional~~  
7 ~~boundaries. Skamania county, should it be required or choose to plan~~  
8 ~~under RCW 36.70A.040, may elect to be included within the~~  
9 ~~jurisdictional boundaries of either the Western or Eastern board.~~

10       ~~(2) Each board shall only hear matters pertaining to the cities and~~  
11 ~~counties located within its jurisdictional boundaries.)~~ (1) A growth  
12 management hearings board for the state of Washington is created. The  
13 board shall consist of seven members qualified by experience or  
14 training in matters pertaining to land use law or land use planning and  
15 who have experience in the practical application of those matters. All  
16 seven board members shall be appointed by the governor, two each  
17 residing respectively in the Central Puget Sound, Eastern Washington,  
18 and Western Washington regions, plus one board member residing within  
19 the state of Washington. At least three members of the board shall be  
20 admitted to practice law in this state, one each residing respectively  
21 in the Central Puget Sound, Eastern Washington, and Western Washington  
22 regions. At least three members of the board shall have been a city or  
23 county elected official, one each residing respectively in the Central  
24 Puget Sound, Eastern Washington, and Western Washington regions. After  
25 expiration of the terms of board members on the previously existing  
26 three growth management hearings boards, no more than four members of  
27 the seven-member board may be members of the same major political  
28 party. No more than two members at the time of their appointment or  
29 during their term may reside in the same county.

30       (2) Each member of the board shall be appointed for a term of six  
31 years. A vacancy shall be filled by appointment by the governor for  
32 the unexpired portion of the term in which the vacancy occurs. Members  
33 of the previously existing three growth management hearings boards  
34 appointed before the effective date of this section shall complete  
35 their staggered, six-year terms as members of the growth management  
36 hearings board created under subsection (1) of this section. The  
37 reduction from nine board members on the previously existing three

1 growth management hearings boards to seven total members on the growth  
2 management hearings board shall be made through attrition, voluntary  
3 resignation, or retirement.

4 **Sec. 5.** RCW 36.70A.260 and 1994 c 249 s 30 are each amended to  
5 read as follows:

6 ~~((1) Each growth management hearings board shall consist of three~~  
7 ~~members qualified by experience or training in matters pertaining to~~  
8 ~~land use planning and residing within the jurisdictional boundaries of~~  
9 ~~the applicable board. At least one member of each board must be~~  
10 ~~admitted to practice law in this state and at least one member must~~  
11 ~~have been a city or county elected official. Each board shall be~~  
12 ~~appointed by the governor and not more than two members at the time of~~  
13 ~~appointment or during their term shall be members of the same political~~  
14 ~~party. No more than two members at the time of appointment or during~~  
15 ~~their term shall reside in the same county.~~

16 ~~(2) Each member of a board shall be appointed for a term of six~~  
17 ~~years. A vacancy shall be filled by appointment by the governor for~~  
18 ~~the unexpired portion of the term in which the vacancy occurs. The~~  
19 ~~terms of the first three members of a board shall be staggered so that~~  
20 ~~one member is appointed to serve until July 1, 1994, one member until~~  
21 ~~July 1, 1996, and one member until July 1, 1998.)~~ (1) Each petition  
22 for review that is filed with the growth management hearings board  
23 shall be heard and decided by a regional panel of growth management  
24 hearings board members. Regional panels shall be constituted as  
25 follows:

26 (a) Central Puget Sound Region. A three-member Central Puget Sound  
27 panel shall be selected to hear matters pertaining to cities and  
28 counties located within the region comprised of King, Pierce,  
29 Snohomish, and Kitsap counties.

30 (b) Eastern Washington Region. A three-member Eastern Washington  
31 panel shall be selected to hear matters pertaining to cities and  
32 counties that are required or choose to plan under RCW 36.70A.040 and  
33 are located east of the crest of the Cascade mountains.

34 (c) Western Washington Region. A three-member Western Washington  
35 panel shall be selected to hear matters pertaining to cities and  
36 counties that are required or choose to plan under RCW 36.70A.040, are  
37 located west of the crest of the Cascade mountains, and are not

1 included in the Central Puget Sound Region. Skamania county, if it is  
2 required or chooses to plan under RCW 36.70A.040, may elect to be  
3 included within either the Western Washington Region or the Eastern  
4 Washington Region.

5 (2)(a) Each regional panel selected to hear and decide cases shall  
6 consist of three board members, at least a majority of whom shall  
7 reside within the region in which the case arose, unless such members  
8 cannot sit on a particular case because of recusal or disqualification,  
9 or unless the board administrative officer determines that there is an  
10 emergency including, but not limited to, the unavailability of a board  
11 member due to illness, absence, vacancy, or significant workload  
12 imbalance. The presiding officer of each case shall reside within the  
13 region in which the case arose, unless the board administrative officer  
14 determines that there is an emergency.

15 (b) Except as provided otherwise by this subsection (2)(b), each  
16 regional panel must: (i) Include one member admitted to practice law  
17 in this state; (ii) include one member who has been a city or county  
18 elected official; and (iii) reflect the political composition of the  
19 board. The requirements of this subsection (2)(b) may be waived by the  
20 board administrative officer due to member unavailability, significant  
21 workload imbalances, or other reasons.

22 **Sec. 6.** RCW 36.70A.270 and 1997 c 429 s 11 are each amended to  
23 read as follows:

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

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

34 (2) Each board member shall receive reimbursement for travel  
35 expenses incurred in the discharge of his or her duties in accordance  
36 with RCW 43.03.050 and 43.03.060. ~~((If it is determined that the~~  
37 ~~review boards shall operate on a full-time basis,))~~ Each member shall

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

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

16 (4) A majority of (~~each~~) the board shall constitute a quorum for  
17 (~~making orders or decisions,~~) adopting rules necessary for the  
18 conduct of its powers and duties(~~(7)~~) or transacting other official  
19 business, and may act even though one position of the board is vacant.  
20 One or more members may hold hearings and take testimony to be reported  
21 for action by the board when authorized by rule or order of the board.  
22 The board shall perform all the powers and duties specified in this  
23 chapter or as otherwise provided by law.

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

1           (6) (~~Each~~) The board shall make findings of fact and prepare a  
2 written decision in each case decided by it, and such findings and  
3 decision shall be effective upon being signed by two or more members of  
4 the (~~board~~) regional panel deciding the particular case and upon  
5 being filed at the board's principal office, and shall be open for  
6 public inspection at all reasonable times.

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

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

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

30           (10) The board shall annually elect one of its members to be the  
31 board administrative officer. The duties and responsibilities of the  
32 administrative officer include handling day-to-day administrative,  
33 budget, and personnel matters on behalf of the board, together with  
34 making case assignments to board members in accordance with the board's  
35 rules of procedure in order to achieve a fair and balanced workload  
36 among all board members. The administrative officer of the board may  
37 carry a reduced caseload to allow time for performing the  
38 administrative work functions.

1       **Sec. 7.** RCW 36.70A.280 and 2008 c 289 s 5 are each amended to read  
2 as follows:

3       (1) ((A)) The growth management hearings board shall hear and  
4 determine only those petitions alleging either:

5       (a) That, except as provided otherwise by this subsection, a state  
6 agency, county, or city planning under this chapter is not in  
7 compliance with the requirements of this chapter, chapter 90.58 RCW as  
8 it relates to the adoption of shoreline master programs or amendments  
9 thereto, or chapter 43.21C RCW as it relates to plans, development  
10 regulations, or amendments, adopted under RCW 36.70A.040 or chapter  
11 90.58 RCW. Nothing in this subsection authorizes ((a)) the board to  
12 hear petitions alleging noncompliance with RCW 36.70A.5801; or

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

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

22       (3) For purposes of this section "person" means any individual,  
23 partnership, corporation, association, state agency, governmental  
24 subdivision or unit thereof, or public or private organization or  
25 entity of any character.

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

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

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

37       If adjusted by ((a)) the board, a county growth management planning  
38 population projection shall only be used for the planning purposes set



1 forth in this chapter and shall be known as ((a)) the "board adjusted  
2 population projection." None of these changes shall affect the  
3 official state and county population forecasts prepared by the office  
4 of financial management, which shall continue to be used for state  
5 budget and planning purposes.

6 **Sec. 8.** RCW 36.70A.290 and 1997 c 429 s 12 are each amended to  
7 read as follows:

8 (1) All requests for review to ((a)) the growth management hearings  
9 board shall be initiated by filing a petition that includes a detailed  
10 statement of issues presented for resolution by the board. The board  
11 shall render written decisions articulating the basis for its holdings.  
12 The board shall not issue advisory opinions on issues not presented to  
13 the board in the statement of issues, as modified by any prehearing  
14 order.

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

20 (a) Except as provided in (c) of this subsection, the date of  
21 publication for a city shall be the date the city publishes the  
22 ordinance, or summary of the ordinance, adopting the comprehensive plan  
23 or development regulations, or amendment thereto, as is required to be  
24 published.

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

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

32 (c) For local governments planning under RCW 36.70A.040, promptly  
33 after approval or disapproval of a local government's shoreline master  
34 program or amendment thereto by the department of ecology as provided  
35 in RCW 90.58.090, the local government shall publish a notice that the  
36 shoreline master program or amendment thereto has been approved or  
37 disapproved by the department of ecology. For purposes of this

1 section, the date of publication for the adoption or amendment of a  
2 shoreline master program is the date the local government publishes  
3 notice that the shoreline master program or amendment thereto has been  
4 approved or disapproved by the department of ecology.

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

10 (4) The board shall base its decision on the record developed by  
11 the city, county, or the state and supplemented with additional  
12 evidence if the board determines that such additional evidence would be  
13 necessary or of substantial assistance to the board in reaching its  
14 decision.

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

18 **Sec. 9.** RCW 36.70A.295 and 1997 c 429 s 13 are each amended to  
19 read as follows:

20 (1) The superior court may directly review a petition for review  
21 filed under RCW 36.70A.290 if all parties to the proceeding before the  
22 board have agreed to direct review in the superior court. The  
23 agreement of the parties shall be in writing and signed by all of the  
24 parties to the proceeding or their designated representatives. The  
25 agreement shall include the parties' agreement to proper venue as  
26 provided in RCW 36.70A.300(5). The parties shall file their agreement  
27 with the board within ten days after the date the petition is filed, or  
28 if multiple petitions have been filed and the board has consolidated  
29 the petitions pursuant to RCW 36.70A.300, within ten days after the  
30 board serves its order of consolidation.

31 (2) Within ten days of receiving the timely and complete agreement  
32 of the parties, the board shall file a certificate of agreement with  
33 the designated superior court and shall serve the parties with copies  
34 of the certificate. The superior court shall obtain exclusive  
35 jurisdiction over a petition when it receives the certificate of  
36 agreement. With the certificate of agreement the board shall also file

1 the petition for review, any orders entered by the board, all other  
2 documents in the board's files regarding the action, and the written  
3 agreement of the parties.

4 (3) For purposes of a petition that is subject to direct review,  
5 the superior court's subject matter jurisdiction shall be equivalent to  
6 that of the board. Consistent with the requirements of the superior  
7 court civil rules, the superior court may consolidate a petition  
8 subject to direct review under this section with a separate action  
9 filed in the superior court.

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

14 (b) The superior court:

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

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

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

22 (c) An aggrieved party may secure appellate review of a final  
23 judgment of the superior court under this section by the supreme court  
24 or the court of appeals. The review shall be secured in the manner  
25 provided by law for review of superior court decisions in other civil  
26 cases.

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

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

37 (7) After the court has assumed jurisdiction over a petition for

1 review under this section, the superior court civil rules shall govern  
2 a request for intervention and all other procedural matters not  
3 specifically provided for in this section.

4 **Sec. 10.** RCW 36.70A.302 and 1997 c 429 s 16 are each amended to  
5 read as follows:

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

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

10 (b) Includes in the final order a determination, supported by  
11 findings of fact and conclusions of law, that the continued validity of  
12 part or parts of the plan or regulation would substantially interfere  
13 with the fulfillment of the goals of this chapter; and

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

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

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

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

34 (i) A permit for construction by any owner, lessee, or contract  
35 purchaser of a single-family residence for his or her own use or for  
36 the use of his or her family on a lot existing before receipt by the

1 county or city of the board's order, except as otherwise specifically  
2 provided in the board's order to protect the public health and safety;

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

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

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

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

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

32 (7)(a) If a determination of invalidity has been made and the  
33 county or city has enacted an ordinance or resolution amending the  
34 invalidated part or parts of the plan or regulation or establishing  
35 interim controls on development affected by the order of invalidity,  
36 after a compliance hearing, the board shall modify or rescind the  
37 determination of invalidity if it determines under the standard in

1 subsection (1) of this section that the plan or regulation, as amended  
2 or made subject to such interim controls, will no longer substantially  
3 interfere with the fulfillment of the goals of this 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. 11.** RCW 36.70A.310 and 1994 c 249 s 32 are each amended to  
11 read as follows:

12 A request for review by the state to ((a)) the growth management  
13 hearings board may be made only by the governor, or with the governor's  
14 consent the head of an agency, or by the commissioner of public lands  
15 as relating to state trust lands, for the review of whether: (1) A  
16 county or city that is required or chooses to plan under RCW 36.70A.040  
17 has failed to adopt a comprehensive plan or development regulations, or  
18 county-wide planning policies within the time limits established by  
19 this chapter; or (2) a county or city that is required or chooses to  
20 plan under this chapter has adopted a comprehensive plan, development  
21 regulations, or county-wide planning policies, that are not in  
22 compliance with the requirements of this chapter.

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

25 ((In amending RCW 36.70A.320(3) by section 20(3), chapter 429, Laws  
26 of 1997,)) The legislature intends that the board((s apply)) applies a  
27 more deferential standard of review to actions of counties and cities  
28 than the preponderance of the evidence standard provided for under  
29 existing law. In recognition of the broad range of discretion that may  
30 be exercised by counties and cities consistent with the requirements of  
31 this chapter, the legislature intends for the board((s)) to grant  
32 deference to counties and cities in how they plan for growth,  
33 consistent with the requirements and goals of this chapter. Local  
34 comprehensive plans and development regulations require counties and  
35 cities to balance priorities and options for action in full  
36 consideration of local circumstances. The legislature finds that while

1 this chapter requires local planning to take place within a framework  
2 of state goals and requirements, the ultimate burden and responsibility  
3 for planning, harmonizing the planning goals of this chapter, and  
4 implementing a county's or city's future rests with that community.

5 **Sec. 13.** RCW 36.70A.345 and 1994 c 249 s 33 are each amended to  
6 read as follows:

7 The governor may impose a sanction or sanctions specified under RCW  
8 36.70A.340 on: (1) A county or city that fails to designate critical  
9 areas, agricultural lands, forest lands, or mineral resource lands  
10 under RCW 36.70A.170 by the date such action was required to have been  
11 taken; (2) a county or city that fails to adopt development regulations  
12 under RCW 36.70A.060 protecting critical areas or conserving  
13 agricultural lands, forest lands, or mineral resource lands by the date  
14 such action was required to have been taken; (3) a county that fails to  
15 designate urban growth areas under RCW 36.70A.110 by the date such  
16 action was required to have been taken; and (4) a county or city that  
17 fails to adopt its comprehensive plan or development regulations when  
18 such actions are required to be taken.

19 Imposition of a sanction or sanctions under this section shall be  
20 preceded by written findings by the governor, that either the county or  
21 city is not proceeding in good faith to meet the requirements of the  
22 act; or that the county or city has unreasonably delayed taking the  
23 required action. The governor shall consult with and communicate his  
24 or her findings to the ((appropriate)) growth management hearings board  
25 prior to imposing the sanction or sanctions. For those counties or  
26 cities that are not required to plan or have not opted in, the governor  
27 in imposing sanctions shall consider the size of the jurisdiction  
28 relative to the requirements of this chapter and the degree of  
29 technical and financial assistance provided.

30 **Sec. 14.** RCW 90.58.190 and 2003 c 321 s 4 are each amended to read  
31 as follows:

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

35 (2)(a) The department's decision to approve, reject, or modify a  
36 proposed master program or amendment adopted by a local government

1 planning under RCW 36.70A.040 shall be appealed to the growth  
2 management hearings board (~~with jurisdiction over the local~~  
3 ~~government~~). The appeal shall be initiated by filing a petition as  
4 provided in RCW 36.70A.250 through 36.70A.320.

5 (b) If the appeal to the growth management hearings board concerns  
6 shorelines, the growth management hearings board shall review the  
7 proposed master program or amendment solely for compliance with the  
8 requirements of this chapter, the policy of RCW 90.58.020 and the  
9 applicable guidelines, the internal consistency provisions of RCW  
10 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter  
11 43.21C RCW as it relates to the adoption of master programs and  
12 amendments under chapter 90.58 RCW.

13 (c) If the appeal to the growth management hearings board concerns  
14 a shoreline of statewide significance, the board shall uphold the  
15 decision by the department unless the board, by clear and convincing  
16 evidence, determines that the decision of the department is  
17 inconsistent with the policy of RCW 90.58.020 and the applicable  
18 guidelines.

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

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

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

32 (b) In an appeal relating to shorelines, the shorelines hearings  
33 board shall review the proposed master program or master program  
34 amendment and, after full consideration of the presentations of the  
35 local government and the department, shall determine the validity of  
36 the local government's master program or amendment in light of the  
37 policy of RCW 90.58.020 and the applicable guidelines.



1 (c) In an appeal relating to shorelines of statewide significance,  
2 the shorelines hearings board shall uphold the decision by the  
3 department unless the board determines, by clear and convincing  
4 evidence that the decision of the department is inconsistent with the  
5 policy of RCW 90.58.020 and the applicable guidelines.

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

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

16 (4) A master program amendment shall become effective after the  
17 approval of the department or after the decision of the shorelines  
18 hearings board to uphold the master program or master program  
19 amendment, provided that the board may remand the master program or  
20 master program adjustment to the local government or the department for  
21 modification prior to the final adoption of the master program or  
22 master program amendment.

23 **Sec. 15.** RCW 34.05.518 and 2003 c 393 s 16 are each amended to  
24 read as follows:

25 (1) The final decision of an administrative agency in an  
26 adjudicative proceeding under this chapter may, except as otherwise  
27 provided in chapter 43.21L RCW, be directly reviewed by the court of  
28 appeals either (a) upon certification by the superior court pursuant to  
29 this section or (b) if the final decision is from an environmental  
30 board as defined in subsection (3) of this section, upon acceptance by  
31 the court of appeals after a certificate of appealability has been  
32 filed by the environmental board that rendered the final decision.

33 (2) For direct review upon certification by the superior court, an  
34 application for direct review must be filed with the superior court  
35 within thirty days of the filing of the petition for review in superior  
36 court. The superior court may certify a case for direct review only if

1 the judicial review is limited to the record of the agency proceeding  
2 and the court finds that:

3 (a) Fundamental and urgent issues affecting the future  
4 administrative process or the public interest are involved which  
5 require a prompt determination;

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

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

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

12 Procedures for certification shall be established by court rule.

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

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

21 (i) Fundamental and urgent statewide or regional issues are raised;  
22 or

23 (ii) The proceeding is likely to have significant precedential  
24 value.

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

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

32 (6) The procedures for direct review of final decisions of  
33 environmental boards include:

34 (a) Within thirty days after filing the petition for review with  
35 the superior court, a party may file an application for direct review  
36 with the superior court and serve the appropriate environmental board  
37 and all parties of record. The application shall request the  
38 environmental board to file a certificate of appealability.

1 (b) If an issue on review is the jurisdiction of the environmental  
2 board, the board may file an application for direct review on that  
3 issue.

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

7 (d) If a certificate of appealability is issued, the parties shall  
8 have fifteen days from the date of service to file a notice of  
9 discretionary review in the superior court, and the notice shall  
10 include a copy of the certificate of appealability and a copy of the  
11 final decision.

12 (e) If the appellate court accepts review, the certificate of  
13 appealability shall be transmitted to the court of appeals as part of  
14 the certified record.

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

18 **Sec. 16.** RCW 34.12.020 and 2002 c 354 s 226 are each amended to  
19 read as follows:

20 Unless the context clearly requires otherwise, the definitions in  
21 this section apply throughout this chapter.

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

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

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

29 (4) "State agency" means any state board, commission, department,  
30 or officer authorized by law to make rules or to conduct adjudicative  
31 proceedings, except those in the legislative or judicial branches, the  
32 growth management hearings board(~~s~~), the utilities and transportation  
33 commission, the pollution control hearings board, the shorelines  
34 hearings board, the forest practices appeals board, the environmental  
35 hearings office, the board of industrial insurance appeals, the  
36 Washington personnel resources board, the public employment relations  
37 commission, and the board of tax appeals.

1           NEW SECTION.   **Sec. 17.** (1) The three growth management hearings  
2 boards are abolished and their powers, duties, and functions are  
3 transferred to the growth management hearings board.

4           (2) All reports, documents, surveys, books, records, files, papers,  
5 or written material in the possession of the three growth management  
6 hearings boards must be delivered to the custody of the growth  
7 management hearings board. All office furnishings, office equipment,  
8 motor vehicles, and other tangible property in the possession of the  
9 three growth management hearings boards must be made available to the  
10 growth management hearings board.

11           (3) All funds, credits, or other assets held by the three growth  
12 management hearings boards must, on the effective date of this section,  
13 be transferred to the growth management hearings board. Any  
14 appropriations made to the three growth management hearings boards  
15 must, on the effective date of this section, be transferred and  
16 credited to the growth management hearings board. If any question  
17 arises as to the transfer of any personnel, funds, books, documents,  
18 records, papers, files, equipment, or other tangible property used or  
19 held in the exercise of the powers and the performance of the duties  
20 and functions transferred, the director of financial management shall  
21 make a determination as to the proper allocation and certify the same  
22 to the state agencies concerned.

23           (4) All employees of the three growth management hearings boards  
24 are transferred to the growth management hearings board. All employees  
25 classified under chapter 41.06 RCW, the state civil service law, are  
26 assigned to the growth management hearings board to perform their usual  
27 duties upon the same terms as formerly, without any loss of rights,  
28 subject to any action that may be appropriate thereafter in accordance  
29 with the laws and rules governing state civil service.

30           (5) This section may not be construed to alter any existing  
31 collective bargaining unit or the provisions of any existing collective  
32 bargaining agreement until the agreement has expired or until the  
33 bargaining unit has been modified by action of the public employment  
34 relations commission as provided by law.

35           (6) All rules and pending business before the three growth  
36 management hearings boards must be continued and acted upon by the  
37 growth management hearings board. All existing contracts and

1 obligations remain in full force and must be performed by the growth  
2 management hearings board.

3 (7) The transfer of the powers, duties, functions, and personnel of  
4 the three growth management hearings boards to the growth management  
5 hearings board does not affect the validity of any act performed before  
6 the effective date of this section.

7 (8) All cases decided and all orders previously issued by the three  
8 growth management hearings boards remain in full force and effect and  
9 are not affected by this act.

10 NEW SECTION. **Sec. 18.** This act takes effect July 1, 2010.

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