

1 **2SHB 2244 - H AMDS 390 ADOPTED 3-19-97**

2 By Representative Reams

3 On page 20, after line 14, strike section 12 and insert the
4 following:

5 **Sec. 12.** RCW 36.70A.305 and 1996 c 325 s 4 are each amended
6 to read as follows:

7 (1) The court shall provide expedited review of ((a
8 determination of invalidity or)) an order ((effectuating)) that
9 includes a determination of invalidity made or issued under RCW
10 36.70A.300((. The matter must be set for hearing within sixty days
11 of the date set for submitting the board's record, absent a showing
12 of good cause for a different date or a stipulation of the
13 parties)) and section 15 of this act.

14 (2) If the court finds that the board properly determined
15 that a county, city, or agency action substantially interferes with
16 the fulfillment of the goals of the growth management act, it shall
17 issue a final order affirming the decision of the board.

18 (3) If the court finds that the board properly determined
19 that a county, city, or agency's comprehensive plans, development
20 regulations, or amendments thereto merited a determination of
21 invalidity, the court shall remand the matter for the board's
22 continuing jurisdiction under section 15 of this act.-

23 On page 21, after line 6, strike section 14 and insert the
24 following:

25 **Sec. 14.** RCW 36.70A.330 and 1995 c 347 s 112 are each
26 amended to read as follows:

27 (1) After the time set for complying with the requirements of
28 this chapter under RCW ((36.70A.300(1)(b))) 36.70A.300(3)(b) has
29 expired, ((or at an earlier time upon the motion of a county or city
30 subject to a determination of invalidity under RCW 36.70A.300,))
31 the board shall set a hearing for the purpose of determining
32 whether the state agency, county, or city is in compliance with the
33 requirements of this chapter.

34 (2) The board shall conduct a hearing and issue a finding of
35 compliance or noncompliance with the requirements of this chapter.

1 A person with standing to challenge the legislation enacted in
 2 response to the board's final order may participate in the hearing
 3 along with the petitioner and the state agency, ~~((city, or))~~
 4 county, or city. A hearing under this subsection shall be given
 5 the highest priority of business to be conducted by the board, and
 6 a finding shall be issued within forty-five days of the filing of
 7 the motion under subsection (1) of this section with the board.
 8 The board shall issue any order necessary to make adjustments to
 9 the compliance schedule and set additional hearings as provided in
 10 subsection (4) of this section.

11 (3) If the board after a compliance hearing finds that the
 12 state agency, county, or city is not in compliance, the board shall
 13 transmit its finding to the governor. The board may recommend to
 14 the governor that the sanctions authorized by this chapter be
 15 imposed. The board shall take into consideration the county's or
 16 city's efforts to meet its compliance schedule in making the
 17 decision to recommend sanctions to the governor.

18 (4) In a compliance hearing upon petition of a party , the
 19 board shall also reconsider its final order and decide((÷

20 ~~(a) If a determination of invalidity has been made, whether~~
 21 ~~such a determination should be rescinded or modified under the~~
 22 ~~standards in RCW 36.70A.300(2); or~~

23 ~~(b) I)),~~ if no determination of invalidity has been made,
 24 whether one now should be made((under the standards in RCW
 25 36.70A.300(2)-)) under section 15 of this act. The board shall
 26 schedule additional hearings as appropriate pursuant to subsections
 27 (1) and (2) of this section.

28 NEW SECTION. Sec. 15. A new section is added to chapter
 29 36.70A RCW to read as follows:

30 A county or city subject to an order of invalidity issued
 31 before the effective date of section 11 of this act, by motion may
 32 request the board to review the order of invalidity in light of the
 33 section 11, chapter . . . , Laws of 1997 (section 11 of this act)
 34 amendments to RCW 36.70A.300, the section 14, chapter . . . , Laws
 35 of 1997 (section 14 of this act) amendments to RCW 36.70A.330, and
 36 section 16 of this act. If a request is made, the board shall
 37 rescind or modify the order of invalidity as necessary to make it

1 consistent with the section 11, chapter . . . , Laws of 1997
2 (section 11 of this act) amendments to RCW 36.70A.300, the section
3 14, chapter . . . , Laws of 1997 (section 14 of this act)
4 amendments to RCW 36.70A.330, and section 16 of this act.

5 NEW SECTION. **Sec. 16.** A new section is added to chapter
6 36.70A RCW to read as follows:

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

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

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

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

19 (d) A determination of invalidity shall take effect
20 immediately and shall remain in effect for no longer than thirty
21 days unless otherwise ordered by a reviewing court as provided in
22 RCW 36.70A.305.

23 (2) A determination of invalidity is prospective in effect and
24 does not extinguish rights that vested under state or local law
25 before receipt by the city or county. The determination of
26 invalidity does not apply to a completed development permit
27 application and related construction permits for a project that
28 vested under state or local law on or before the date of the
29 board's order.

30 (3)(a) Except as otherwise provided in (b) of this subsection,
31 a completed development permit application not vested under state
32 or local law on or before the date of the board's determination of
33 invalidity vests to the local ordinance or resolution that is
34 determined by the board not to substantially interfere with the
35 fulfillment of the goals of this chapter.

36 (b) Even though it is not vested under state or local law
37 before receipt by the county or city of the board's order, a

1 determination of invalidity does not apply to a completed
2 development permit application for:

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

9 (ii) A building permit and related construction permits for
10 remodeling or expansion of an existing structure on a lot existing
11 before receipt by the county or city; and

12 (iii) A boundary line adjustment or a division of land that
13 does not increase the number of buildable lots existing before
14 receipt by the county or city.

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

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

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

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

11 (b) If the board determines that part or parts of the plan or
12 regulation are no longer invalid as provided in this subsection,
13 but does not find that the plan or regulation is in compliance with
14 all of the requirements of this chapter, the board, in its order,
15 may require periodic reports to the board on the progress the
16 jurisdiction is making towards compliance.-

17 Renumber the remaining sections consecutively and correct internal
18 references accordingly. Correct the title.

EFFECT: Sets forth process for board review of comprehensive plans and development regulations and provides procedure for invalidity findings; allows a thirty day invalidity period that automatically expires after 30 days if no appeal to superior court filed; provides for expedited review by court of a board's order of invalidity; allows certain projects to vest- when county or city under orders of invalidity.