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HOUSE BILL 2891

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State of Washington

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By Representatives Mulliken, Cairnes, Johnson, Mielke, Thompson, Sherstad, McMorris, Bush, Talcott, Chandler, Zellinsky and D. Sommers

Read first time 01/21/98. Referred to Committee on House Government Reform & Land Use.

1 AN ACT Relating to determinations of invalidity under the growth  
2 management act; amending RCW 36.70A.140, 36.70A.300, 36.70A.320, and  
3 36.70A.330; creating a new section; repealing RCW 36.70A.302,  
4 36.70A.305, and 36.70A.335; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** If a county or city is subject to a  
7 determination of invalidity as of the effective date of this act, the  
8 growth management hearings board shall immediately rescind the order of  
9 invalidity and take further action consistent with chapter 36.70A RCW.

10 **Sec. 2.** RCW 36.70A.140 and 1995 c 347 s 107 are each amended to  
11 read as follows:

12 Each county and city that is required or chooses to plan under RCW  
13 36.70A.040 shall establish and broadly disseminate to the public a  
14 public participation program identifying procedures providing for early  
15 and continuous public participation in the development and amendment of  
16 comprehensive land use plans and development regulations implementing  
17 such plans. The procedures shall provide for broad dissemination of  
18 proposals and alternatives, opportunity for written comments, public

1 meetings after effective notice, provision for open discussion,  
2 communication programs, information services, and consideration of and  
3 response to public comments. (~~In enacting legislation in response to~~  
4 ~~the board's decision pursuant to RCW 36.70A.300 declaring part or all~~  
5 ~~of a comprehensive plan or development regulation invalid, the county~~  
6 ~~or city shall provide for public participation that is appropriate and~~  
7 ~~effective under the circumstances presented by the board's order.))  
8 Errors in exact compliance with the established program and procedures  
9 shall not render the comprehensive land use plan or development  
10 regulations (~~invalid~~) out of compliance if the spirit of the program  
11 and procedures is observed.~~

12       **Sec. 3.** RCW 36.70A.300 and 1997 c 429 s 14 are each amended to  
13 read as follows:

14       (1) The board shall issue a final order that shall be based  
15 exclusively on whether or not a state agency, county, or city is in  
16 compliance with the requirements of this chapter, chapter 90.58 RCW as  
17 it relates to adoption or amendment of shoreline master programs, or  
18 chapter 43.21C RCW as it relates to adoption of plans, development  
19 regulations, and amendments thereto, under RCW 36.70A.040 or chapter  
20 90.58 RCW.

21       (2)(a) Except as provided in (b) of this subsection, the final  
22 order shall be issued within one hundred eighty days of receipt of the  
23 petition for review, or, if multiple petitions are filed, within one  
24 hundred eighty days of receipt of the last petition that is  
25 consolidated.

26       (b) The board may extend the period of time for issuing a decision  
27 to enable the parties to settle the dispute if additional time is  
28 necessary to achieve a settlement, and (i) an extension is requested by  
29 all parties, or (ii) an extension is requested by the petitioner and  
30 respondent and the board determines that a negotiated settlement  
31 between the remaining parties could resolve significant issues in  
32 dispute. The request must be filed with the board not later than seven  
33 days before the date scheduled for the hearing on the merits of the  
34 petition. The board may authorize one or more extensions for up to  
35 ninety days each, subject to the requirements of this section.

36       (3) In the final order, the board shall either:

37       (a) Find that the state agency, county, or city is in compliance  
38 with the requirements of this chapter, chapter 90.58 RCW as it relates

1 to the adoption or amendment of shoreline master programs, or chapter  
2 43.21C RCW as it relates to adoption of plans, development regulations,  
3 and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

4 (b) Find that the state agency, county, or city is not in  
5 compliance with the requirements of this chapter, chapter 90.58 RCW as  
6 it relates to the adoption or amendment of shoreline master programs,  
7 or chapter 43.21C RCW as it relates to adoption of plans, development  
8 regulations, and amendments thereto, under RCW 36.70A.040 or chapter  
9 90.58 RCW, in which case the board shall remand the matter to the  
10 affected state agency, county, or city. The board shall specify a  
11 reasonable time not in excess of one hundred eighty days, or such  
12 longer period as determined by the board in cases of unusual scope or  
13 complexity, within which the state agency, county, or city shall comply  
14 with the requirements of this chapter. The board may require periodic  
15 reports to the board on the progress the jurisdiction is making towards  
16 compliance.

17 (4) (~~Unless the board makes a determination of invalidity as~~  
18 ~~provided in RCW 36.70A.302,~~) A finding of noncompliance and an order  
19 of remand shall not affect the validity of comprehensive plans and  
20 development regulations during the period of remand.

21 (5) Any party aggrieved by a final decision of the hearings board  
22 may appeal the decision to superior court as provided in RCW 34.05.514  
23 or 36.01.050 within thirty days of the final order of the board.

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

26 (1) Except as provided in subsection (~~(+5)~~) (4) of this section,  
27 comprehensive plans and development regulations, and amendments  
28 thereto, adopted under this chapter are presumed valid upon adoption.

29 (~~Except as otherwise provided in subsection (4) of this~~  
30 ~~section,~~) The burden is on the petitioner to demonstrate that any  
31 action taken by a state agency, county, or city under this chapter is  
32 not in compliance with the requirements of this chapter.

33 (3) In any petition under this chapter, the board, after full  
34 consideration of the petition, shall determine whether there is  
35 compliance with the requirements of this chapter. In making its  
36 determination, the board shall consider the criteria adopted by the  
37 department under RCW 36.70A.190(4). The board shall find compliance  
38 unless it determines that the action by the state agency, county, or

1 city is clearly erroneous in view of the entire record before the board  
2 and in light of the goals and requirements of this chapter.

3 ~~(4) ((A county or city subject to a determination of invalidity  
4 made under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating  
5 that the ordinance or resolution it has enacted in response to the  
6 determination of invalidity will no longer substantially interfere with  
7 the fulfillment of the goals of this chapter under the standard in RCW  
8 36.70A.302(1)).~~

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

12 **Sec. 5.** RCW 36.70A.330 and 1997 c 429 s 21 are each amended to  
13 read as follows:

14 (1) After the time set for complying with the requirements of this  
15 chapter under RCW 36.70A.300(3)(b) has expired, or at an earlier time  
16 upon the motion of a county or city subject to a determination of  
17 invalidity under RCW 36.70A.300, the board shall set a hearing for the  
18 purpose of determining whether the state agency, county, or city is in  
19 compliance with the requirements of this chapter.

20 (2) The board shall conduct a hearing and issue a finding of  
21 compliance or noncompliance with the requirements of this chapter and  
22 with any compliance schedule established by the board in its final  
23 order. A person with standing to challenge the legislation enacted in  
24 response to the board's final order may participate in the hearing  
25 along with the petitioner and the state agency, county, or city. A  
26 hearing under this subsection shall be given the highest priority of  
27 business to be conducted by the board, and a finding shall be issued  
28 within forty-five days of the filing of the motion under subsection (1)  
29 of this section with the board. The board shall issue any order  
30 necessary to make adjustments to the compliance schedule and set  
31 additional hearings as provided in subsection ~~((5))~~ (4) of this  
32 section.

33 (3) If the board after a compliance hearing finds that the state  
34 agency, county, or city is not in compliance, the board shall transmit  
35 its finding to the governor. The board may recommend to the governor  
36 that the sanctions authorized by this chapter be imposed. The board  
37 shall take into consideration the county's or city's efforts to meet

1 its compliance schedule in making the decision to recommend sanctions  
2 to the governor.

3 ~~(4) ((In a compliance hearing upon petition of a party, the board  
4 shall also reconsider its final order and decide, if no determination  
5 of invalidity has been made, whether one now should be made under RCW  
6 36.70A.302.~~

7 ~~(5))~~ The board shall schedule additional hearings as appropriate  
8 pursuant to subsections (1) and (2) of this section.

9 NEW SECTION. **Sec. 6.** The following acts or parts of acts are each  
10 repealed:

11 (1) RCW 36.70A.302 and 1997 c 429 s 16;

12 (2) RCW 36.70A.305 and 1996 c 325 s 4; and

13 (3) RCW 36.70A.335 and 1997 c 429 s 22.

14 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
15 preservation of the public peace, health, or safety, or support of the  
16 state government and its existing public institutions, and takes effect  
17 immediately.

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