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HOUSE BILL 2282

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State of Washington                      62nd Legislature                      2012 Regular Session

By Representatives Angel, Haler, Rodne, Buys, McCune, and Overstreet

Read first time 01/11/12. Referred to Committee on Local Government.

1            AN ACT Relating to eliminating the growth management hearings  
2 board; amending RCW 36.70A.110, 36.70A.140, 36.70A.172, 36.70A.210,  
3 36.70A.290, 36.70A.310, 36.70A.320, 36.70A.3201, 36.70A.340,  
4 36.70A.345, and 82.46.030; reenacting and amending RCW 36.70A.130 and  
5 43.21B.005; adding a new section to chapter 36.70A RCW; creating a new  
6 section; repealing RCW 36.70A.250, 36.70A.252, 36.70A.260, 36.70A.270,  
7 36.70A.280, 36.70A.295, 36.70A.300, 36.70A.302, 36.70A.305, 36.70A.330,  
8 36.70A.335, and 36.70A.903; and providing an effective date.

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

10            **Sec. 1.** RCW 36.70A.110 and 2010 c 211 s 1 are each amended to read  
11 as follows:

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

1 urban growth area includes a city, or is adjacent to territory already  
2 characterized by urban growth, or is a designated new fully contained  
3 community as defined by RCW 36.70A.350.

4 (2) Based upon the growth management population projection made for  
5 the county by the office of financial management, the county and each  
6 city within the county shall include areas and densities sufficient to  
7 permit the urban growth that is projected to occur in the county or  
8 city for the succeeding twenty-year period, except for those urban  
9 growth areas contained totally within a national historical reserve.  
10 As part of this planning process, each city within the county must  
11 include areas sufficient to accommodate the broad range of needs and  
12 uses that will accompany the projected urban growth including, as  
13 appropriate, medical, governmental, institutional, commercial, service,  
14 retail, and other nonresidential uses.

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

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

1 A city may object formally with the department over the designation of  
2 the urban growth area within which it is located. Where appropriate,  
3 the department shall attempt to resolve the conflicts, including the  
4 use of mediation services.

5 (3) Urban growth should be located first in areas already  
6 characterized by urban growth that have adequate existing public  
7 facility and service capacities to serve such development, second in  
8 areas already characterized by urban growth that will be served  
9 adequately by a combination of both existing public facilities and  
10 services and any additional needed public facilities and services that  
11 are provided by either public or private sources, and third in the  
12 remaining portions of the urban growth areas. Urban growth may also be  
13 located in designated new fully contained communities as defined by RCW  
14 36.70A.350.

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

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

37 (6) Each county shall include designations of urban growth areas in  
38 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 2011 c 360 s 16 and 2011 c 353 s 2 are  
8 each reenacted and amended to 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 deadlines in subsections (4) and (5) of this section.

16 (b) Except as otherwise provided, a county or city not planning  
17 under RCW 36.70A.040 shall take action to review and, if needed, revise  
18 its policies and development regulations regarding critical areas and  
19 natural resource lands adopted according to this chapter to ensure  
20 these policies and regulations comply with the requirements of this  
21 chapter according to the deadlines in subsections (4) and (5) of this  
22 section. Legislative action means the adoption of a resolution or  
23 ordinance following notice and a public hearing indicating at a  
24 minimum, a finding that a review and evaluation has occurred and  
25 identifying the revisions made, or that a revision was not needed and  
26 the reasons therefor.

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

32 (d) Any amendment of or revision to a comprehensive land use plan  
33 shall conform to this chapter. Any amendment of or revision to  
34 development regulations shall be consistent with and implement the  
35 comprehensive plan.

36 (2)(a) Each county and city shall establish and broadly disseminate  
37 to the public a public participation program consistent with RCW

1 36.70A.035 and 36.70A.140 that identifies procedures and schedules  
2 whereby updates, proposed amendments, or revisions of the comprehensive  
3 plan are considered by the governing body of the county or city no more  
4 frequently than once every year. "Updates" means to review and revise,  
5 if needed, according to subsection (1) of this section, and the  
6 deadlines in subsections (4) and (5) of this section or in accordance  
7 with the provisions of subsection (6) of this section. Amendments may  
8 be considered more frequently than once per year under the following  
9 circumstances:

10 (i) The initial adoption of a subarea plan. Subarea plans adopted  
11 under this subsection (2)(a)(i) must clarify, supplement, or implement  
12 jurisdiction-wide comprehensive plan policies, and may only be adopted  
13 if the cumulative impacts of the proposed plan are addressed by  
14 appropriate environmental review under chapter 43.21C RCW;

15 (ii) The development of an initial subarea plan for economic  
16 development located outside of the one hundred year floodplain in a  
17 county that has completed a state-funded pilot project that is based on  
18 watershed characterization and local habitat assessment;

19 (iii) The adoption or amendment of a shoreline master program under  
20 the procedures set forth in chapter 90.58 RCW;

21 (iv) The amendment of the capital facilities element of a  
22 comprehensive plan that occurs concurrently with the adoption or  
23 amendment of a county or city budget; or

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

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

1           (3)(a) Each county that designates urban growth areas under RCW  
2 36.70A.110 shall review, according to the schedules established in  
3 subsection (5) of this section, its designated urban growth area or  
4 areas, and the densities permitted within both the incorporated and  
5 unincorporated portions of each urban growth area. In conjunction with  
6 this review by the county, each city located within an urban growth  
7 area shall review the densities permitted within its boundaries, and  
8 the extent to which the urban growth occurring within the county has  
9 located within each city and the unincorporated portions of the urban  
10 growth areas.

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

18           (4) Except as provided in subsection (6) of this section, counties  
19 and cities shall take action to review and, if needed, revise their  
20 comprehensive plans and development regulations to ensure the plan and  
21 regulations comply with the requirements of this chapter as follows:

22           (a) On or before December 1, 2004, for Clallam, Clark, Jefferson,  
23 King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the  
24 cities within those counties;

25           (b) On or before December 1, 2005, for Cowlitz, Island, Lewis,  
26 Mason, San Juan, Skagit, and Skamania counties and the cities within  
27 those counties;

28           (c) On or before December 1, 2006, for Benton, Chelan, Douglas,  
29 Grant, Kittitas, Spokane, and Yakima counties and the cities within  
30 those counties; and

31           (d) On or before December 1, 2007, for Adams, Asotin, Columbia,  
32 Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan,  
33 Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman  
34 counties and the cities within those counties.

35           (5) Except as otherwise provided in subsections (6) and (8) of this  
36 section, following the review of comprehensive plans and development  
37 regulations required by subsection (4) of this section, counties and

1 cities shall take action to review and, if needed, revise their  
2 comprehensive plans and development regulations to ensure the plan and  
3 regulations comply with the requirements of this chapter as follows:

4 (a) On or before June 30, 2015, and every eight years thereafter,  
5 for King, Pierce, and Snohomish counties and the cities within those  
6 counties;

7 (b) On or before June 30, 2016, and every eight years thereafter,  
8 for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit,  
9 Thurston, and Whatcom counties and the cities within those counties;

10 (c) On or before June 30, 2017, and every eight years thereafter,  
11 for Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania,  
12 Spokane, and Yakima counties and the cities within those counties; and

13 (d) On or before June 30, 2018, and every eight years thereafter,  
14 for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays  
15 Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens,  
16 Wahkiakum, Walla Walla, and Whitman counties and the cities within  
17 those counties.

18 (6)(a) Nothing in this section precludes a county or city from  
19 conducting the review and evaluation required by this section before  
20 the deadlines established in subsections (4) and (5) of this section.  
21 Counties and cities may begin this process early and may be eligible  
22 for grants from the department, subject to available funding, if they  
23 elect to do so.

24 (b) A county that is subject to a deadline established in  
25 subsection (4)(b) through (d) of this section and meets the following  
26 criteria may comply with the requirements of this section at any time  
27 within the thirty-six months following the deadline established in  
28 subsection (4) of this section: The county has a population of less  
29 than fifty thousand and has had its population increase by no more than  
30 seventeen percent in the ten years preceding the deadline established  
31 in subsection (4) of this section as of that date.

32 (c) A city that is subject to a deadline established in subsection  
33 (4)(b) through (d) of this section and meets the following criteria may  
34 comply with the requirements of this section at any time within the  
35 thirty-six months following the deadline established in subsection (4)  
36 of this section: The city has a population of no more than five  
37 thousand and has had its population increase by the greater of either



1 no more than one hundred persons or no more than seventeen percent in  
2 the ten years preceding the deadline established in subsection (4) of  
3 this section as of that date.

4 (d) A county or city that is subject to a deadline established in  
5 subsection (4)(d) of this section and that meets the criteria  
6 established in subsection (6)(b) or (c) of this section may comply with  
7 the requirements of subsection (4)(d) of this section at any time  
8 within the thirty-six months after the extension provided in subsection  
9 (6)(b) or (c) of this section.

10 (e) A county that is subject to a deadline established in  
11 subsection (5)(b) through (d) of this section and meets the following  
12 criteria may comply with the requirements of this section at any time  
13 within the twenty-four months following the deadline established in  
14 subsection (5) of this section: The county has a population of less  
15 than fifty thousand and has had its population increase by no more than  
16 seventeen percent in the ten years preceding the deadline established  
17 in subsection (5) of this section as of that date.

18 (f) A city that is subject to a deadline established in subsection  
19 (5)(b) through (d) of this section and meets the following criteria may  
20 comply with the requirements of this section at any time within the  
21 twenty-four months following the deadline established in subsection (5)  
22 of this section: The city has a population of no more than five  
23 thousand and has had its population increase by the greater of either  
24 no more than one hundred persons or no more than seventeen percent in  
25 the ten years preceding the deadline established in subsection (5) of  
26 this section as of that date.

27 (g) 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 (7)(a) The requirements imposed on counties and cities under this  
31 section shall be considered "requirements of this chapter" under the  
32 terms of RCW 36.70A.040(1). Only those counties and cities that meet  
33 the following criteria may receive grants, loans, pledges, or financial  
34 guarantees under chapter 43.155 or 70.146 RCW:

35 (i) Complying with the deadlines in this section;

36 (ii) Demonstrating substantial progress towards compliance with the  
37 schedules in this section for development regulations that protect  
38 critical areas; or

1 (iii) Complying with the extension provisions of subsection (6)(b),  
2 (c), or (d) of this section.

3 (b) A county or city that is fewer than twelve months out of  
4 compliance with the schedules in this section for development  
5 regulations that protect critical areas is making substantial progress  
6 towards compliance. Only those counties and cities in compliance with  
7 the schedules in this section may receive preference for grants or  
8 loans subject to the provisions of RCW 43.17.250.

9 (8)(a) Except as otherwise provided in (c) of this subsection, if  
10 a participating watershed is achieving benchmarks and goals for the  
11 protection of critical areas functions and values, the county is not  
12 required to update development regulations to protect critical areas as  
13 they specifically apply to agricultural activities in that watershed.

14 (b) A county that has made the election under RCW 36.70A.710(1) may  
15 only adopt or amend development regulations to protect critical areas  
16 as they specifically apply to agricultural activities in a  
17 participating watershed if:

18 (i) A work plan has been approved for that watershed in accordance  
19 with RCW 36.70A.725;

20 (ii) The local watershed group for that watershed has requested the  
21 county to adopt or amend development regulations as part of a work plan  
22 developed under RCW 36.70A.720;

23 (iii) The adoption or amendment of the development regulations is  
24 necessary to enable the county to respond to an order of the (~~growth~~  
25 ~~management hearings board or~~) court;

26 (iv) The adoption or amendment of development regulations is  
27 necessary to address a threat to human health or safety; or

28 (v) Three or more years have elapsed since the receipt of funding.

29 (c) Beginning ten years from the date of receipt of funding, a  
30 county that has made the election under RCW 36.70A.710(1) must review  
31 and, if necessary, revise development regulations to protect critical  
32 areas as they specifically apply to agricultural activities in a  
33 participating watershed in accordance with the review and revision  
34 requirements and timeline in subsection (5) of this section. This  
35 subsection (8)(c) does not apply to a participating watershed that has  
36 determined under RCW 36.70A.720(2)(c)(ii) that the watershed's goals  
37 and benchmarks for protection have been met.

1           **Sec. 3.** RCW 36.70A.140 and 1995 c 347 s 107 are each amended to  
2 read as follows:

3           Each county and city that is required or chooses to plan under RCW  
4 36.70A.040 shall establish and broadly disseminate to the public a  
5 public participation program identifying procedures providing for early  
6 and continuous public participation in the development and amendment of  
7 comprehensive land use plans and development regulations implementing  
8 such plans. The procedures shall provide for broad dissemination of  
9 proposals and alternatives, opportunity for written comments, public  
10 meetings after effective notice, provision for open discussion,  
11 communication programs, information services, and consideration of and  
12 response to public comments. In enacting legislation in response to  
13 ~~((the board's decision pursuant to RCW 36.70A.300))~~ a court's decision  
14 declaring part or all of a comprehensive plan or development regulation  
15 invalid, the county or city shall provide for public participation that  
16 is appropriate and effective under the circumstances presented by the  
17 ~~((board's))~~ court's order. Errors in exact compliance with the  
18 established program and procedures shall not render the comprehensive  
19 land use plan or development regulations invalid if the spirit of the  
20 program and procedures is observed.

21           **Sec. 4.** RCW 36.70A.172 and 2010 c 211 s 3 are each amended to read  
22 as follows:

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

29           ~~((2) If it determines that advice from scientific or other experts  
30 is necessary or will be of substantial assistance in reaching its  
31 decision, the growth management hearings board may retain scientific or  
32 other expert advice to assist in reviewing a petition under RCW  
33 36.70A.290 that involves critical areas.))~~

34           **Sec. 5.** RCW 36.70A.210 and 2009 c 121 s 2 are each amended to read  
35 as follows:

36           (1) The legislature recognizes that counties are regional

1 governments within their boundaries, and cities are primary providers  
2 of urban governmental services within urban growth areas. For the  
3 purposes of this section, a "countywide planning policy" is a written  
4 policy statement or statements used solely for establishing a  
5 countywide framework from which county and city comprehensive plans are  
6 developed and adopted pursuant to this chapter. This framework shall  
7 ensure that city and county comprehensive plans are consistent as  
8 required in RCW 36.70A.100. Nothing in this section shall be construed  
9 to alter the land-use powers of cities.

10 (2) The legislative authority of a county that plans under RCW  
11 36.70A.040 shall adopt a countywide planning policy in cooperation with  
12 the cities located in whole or in part within the county as follows:

13 (a) No later than sixty calendar days from July 16, 1991, the  
14 legislative authority of each county that as of June 1, 1991, was  
15 required or chose to plan under RCW 36.70A.040 shall convene a meeting  
16 with representatives of each city located within the county for the  
17 purpose of establishing a collaborative process that will provide a  
18 framework for the adoption of a countywide planning policy. In other  
19 counties that are required or choose to plan under RCW 36.70A.040, this  
20 meeting shall be convened no later than sixty days after the date the  
21 county adopts its resolution of intention or was certified by the  
22 office of financial management.

23 (b) The process and framework for adoption of a countywide planning  
24 policy specified in (a) of this subsection shall determine the manner  
25 in which the county and the cities agree to all procedures and  
26 provisions including but not limited to desired planning policies,  
27 deadlines, ratification of final agreements and demonstration thereof,  
28 and financing, if any, of all activities associated therewith.

29 (c) If a county fails for any reason to convene a meeting with  
30 representatives of cities as required in (a) of this subsection, the  
31 governor may immediately impose any appropriate sanction or sanctions  
32 on the county from those specified under RCW 36.70A.340.

33 (d) If there is no agreement by October 1, 1991, in a county that  
34 was required or chose to plan under RCW 36.70A.040 as of June 1, 1991,  
35 or if there is no agreement within one hundred twenty days of the date  
36 the county adopted its resolution of intention or was certified by the  
37 office of financial management in any other county that is required or  
38 chooses to plan under RCW 36.70A.040, the governor shall first inquire

1 of the jurisdictions as to the reason or reasons for failure to reach  
2 an agreement. If the governor deems it appropriate, the governor may  
3 immediately request the assistance of the department of (~~community,~~  
4 ~~trade, and economic development~~) commerce to mediate any disputes that  
5 preclude agreement. If mediation is unsuccessful in resolving all  
6 disputes that will lead to agreement, the governor may impose  
7 appropriate sanctions from those specified under RCW 36.70A.340 on the  
8 county, city, or cities for failure to reach an agreement as provided  
9 in this section. The governor shall specify the reason or reasons for  
10 the imposition of any sanction.

11 ((+e)) (d) No later than July 1, 1992, the legislative authority  
12 of each county that was required or chose to plan under RCW 36.70A.040  
13 as of June 1, 1991, or no later than fourteen months after the date the  
14 county adopted its resolution of intention or was certified by the  
15 office of financial management the county legislative authority of any  
16 other county that is required or chooses to plan under RCW 36.70A.040,  
17 shall adopt a countywide planning policy according to the process  
18 provided under this section and that is consistent with the agreement  
19 pursuant to (b) of this subsection, and after holding a public hearing  
20 or hearings on the proposed countywide planning policy.

21 (3) A countywide planning policy shall at a minimum, address the  
22 following:

23 (a) Policies to implement RCW 36.70A.110;

24 (b) Policies for promotion of contiguous and orderly development  
25 and provision of urban services to such development;

26 (c) Policies for siting public capital facilities of a countywide  
27 or statewide nature, including transportation facilities of statewide  
28 significance as defined in RCW 47.06.140;

29 (d) Policies for countywide transportation facilities and  
30 strategies;

31 (e) Policies that consider the need for affordable housing, such as  
32 housing for all economic segments of the population and parameters for  
33 its distribution;

34 (f) Policies for joint county and city planning within urban growth  
35 areas;

36 (g) Policies for countywide economic development and employment,  
37 which must include consideration of the future development of  
38 commercial and industrial facilities; and

1 (h) An analysis of the fiscal impact.

2 (4) Federal agencies and Indian tribes may participate in and  
3 cooperate with the countywide planning policy adoption process.  
4 Adopted countywide planning policies shall be adhered to by state  
5 agencies.

6 (5) Failure to adopt a countywide planning policy that meets the  
7 requirements of this section may result in the imposition of a sanction  
8 or sanctions on a county or city within the county, as specified in RCW  
9 36.70A.340. In imposing a sanction or sanctions, the governor shall  
10 specify the reasons for failure to adopt a countywide planning policy  
11 in order that any imposed sanction or sanctions are fairly and  
12 equitably related to the failure to adopt a countywide planning policy.

13 (6) Cities and the governor may appeal an adopted countywide  
14 planning policy to (~~the growth management hearings board~~) superior  
15 court within sixty days of the adoption of the countywide planning  
16 policy.

17 (7) Multicounty planning policies shall be adopted by two or more  
18 counties, each with a population of four hundred fifty thousand or  
19 more, with contiguous urban areas and may be adopted by other counties,  
20 according to the process established under this section or other  
21 processes agreed to among the counties and cities within the affected  
22 counties throughout the multicounty region.

23 **Sec. 6.** RCW 36.70A.290 and 2011 c 277 s 1 are each amended to read  
24 as follows:

25 (1) All requests for review to the (~~growth management hearings~~  
26 ~~board~~) superior court shall be initiated by filing a petition that  
27 includes a detailed statement of issues presented for resolution by the  
28 (~~board~~) court. (~~The board shall render written decisions~~  
29 ~~articulating the basis for its holdings. The board shall not issue~~  
30 ~~advisory opinions on issues not presented to the board in the statement~~  
31 ~~of issues, as modified by any prehearing order~~) The superior court  
32 shall hear and determine petitions filed under this section alleging  
33 either that:

34 (a) A state agency, county, or city planning under this chapter is  
35 not in compliance with the requirements of this chapter or chapter  
36 90.58 RCW as it relates to the adoption of local shoreline master  
37 programs or program amendments; or

1       (b) The approval of a work plan adopted under RCW 36.70A.735(1)(a)  
2 is not in compliance with the requirements of the programs established  
3 under RCW 36.70A.710; or

4       (c) A department certification under RCW 36.70A.735(1)(c) is  
5 erroneous.

6       (2) A petition may be filed only by (a) the state or a county or  
7 city that plans under this chapter, or (b) a person qualified pursuant  
8 to RCW 34.05.530.

9       (3) All petitions relating to whether or not an adopted  
10 comprehensive plan, development regulation, or permanent amendment  
11 thereto, is in compliance with the goals and requirements of this  
12 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days  
13 after publication as provided in (a) through (c) of this subsection.

14       (a) Except as provided in (c) of this subsection, the date of  
15 publication for a city shall be the date the city publishes the  
16 ordinance, or summary of the ordinance, adopting the comprehensive plan  
17 or development regulations, or amendment thereto, as is required to be  
18 published.

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

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

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

35       ~~((3) Unless the board dismisses the petition as frivolous or finds~~  
36 ~~that the person filing the petition lacks standing, or the parties have~~  
37 ~~filed an agreement to have the case heard in superior court as provided~~

1 in RCW 36.70A.295, the board shall, within ten days of receipt of the  
2 petition, set a time for hearing the matter.

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

8 ~~(5))~~ (4) The ~~((board))~~ court, shall consolidate, when appropriate,  
9 all petitions involving the review of the same comprehensive plan or  
10 the same development regulation or regulations.

11 **Sec. 7.** RCW 36.70A.310 and 2010 c 211 s 11 are each amended to  
12 read as follows:

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

25 **Sec. 8.** RCW 36.70A.320 and 1997 c 429 s 20 are each amended to  
26 read as follows:

27 ~~(1) ((Except as provided in subsection (5) of this section,))~~  
28 Comprehensive plans and development regulations, and amendments  
29 thereto, adopted under this chapter are presumed valid upon adoption.  
30 The shoreline element of a comprehensive plan and the applicable  
31 development regulations adopted by a county or city take effect as  
32 provided in chapter 90.58 RCW.

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



1 (3) In any petition under ~~((this chapter))~~ RCW 36.70A.290, the  
2 ~~((board))~~ court, after full consideration of the petition, shall  
3 determine whether there is compliance with the requirements of this  
4 chapter. In making its determination, the ~~((board))~~ court shall  
5 consider the ~~((criteria adopted by the department under RCW~~  
6 ~~36.70A.190(4)))~~ statutory requirements of this chapter. The ~~((board))~~  
7 court shall find compliance unless it determines that the action by the  
8 state agency, county, or city is clearly erroneous in view of the  
9 entire record before the ~~((board))~~ court and in light of the goals and  
10 requirements of this chapter.

11 (4) ~~((A county or city subject to a determination of invalidity~~  
12 ~~made under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating~~  
13 ~~that the ordinance or resolution it has enacted in response to the~~  
14 ~~determination of invalidity will no longer substantially interfere with~~  
15 ~~the fulfillment of the goals of this chapter under the standard in RCW~~  
16 ~~36.70A.302(1)).~~

17 (5) ~~The shoreline element of a comprehensive plan and the~~  
18 ~~applicable development regulations adopted by a county or city shall~~  
19 ~~take effect as provided in chapter 90.58 RCW.)~~ In reviewing a petition  
20 under RCW 36.70A.290, the court shall issue a final order based  
21 exclusively on whether or not a state agency, county, or city is in  
22 compliance with the requirements of this chapter or chapter 90.58 RCW  
23 as it relates to the adoption or amendment of shoreline master  
24 programs. In the final order, the court may find either that (a) the  
25 state agency, county, or city is in compliance with the requirements of  
26 this chapter or chapter 90.58 RCW as it relates to the adoption or  
27 amendment of the shoreline master programs, or (b) the state agency,  
28 county, or city is not in compliance with the requirements of this  
29 chapter or chapter 90.58 RCW as it relates to the adoption or amendment  
30 of the shoreline master programs, in which case the court shall remand  
31 the matter to the affected state agency, county, or city. The court  
32 shall specify a reasonable time not in excess of one hundred eighty  
33 days, or such longer period as determined by the court in cases of  
34 unusual scope or complexity, within which the state agency, county, or  
35 city shall comply with the requirements of this chapter. The court may  
36 require periodic reports to the court on the progress the jurisdiction  
37 is making towards compliance.

1       (5) The court may determine that part or all of a comprehensive  
2 plan or development regulation is invalid if the court makes a finding  
3 of noncompliance and issues an order of remand under subsection (4) of  
4 this section. The final order must specify the particular part or  
5 parts of a plan or regulation that are determined to be invalid, and  
6 the reasons for their invalidity.

7       (6) Unless the court makes a determination of invalidity under  
8 subsection (5) of this section, a finding of noncompliance and an order  
9 of remand shall not affect the validity of comprehensive plans and  
10 development regulations during the period of remand.

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

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

24       (9)(a) A development permit application not vested under state or  
25 local law before receipt of the court's order by the county or city  
26 vests to the local ordinance or resolution that is determined by the  
27 court not to substantially interfere with the fulfillment of the goals  
28 of this chapter.

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

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

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

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

8        (10) A county or city subject to a determination of invalidity may  
9 adopt interim controls and other measures to be in effect until it  
10 adopts a comprehensive plan and development regulations that comply  
11 with the requirements of this chapter. A development permit  
12 application may vest under an interim control or measure.

13        (11) After the time set for complying with the requirements of this  
14 chapter under subsection (4) of this section has expired, the court  
15 shall set a hearing for the purpose of determining whether the state  
16 agency, county, or city is in compliance with the requirements of this  
17 chapter. After a hearing, if the court finds that the state agency,  
18 city, or county is not in compliance, the court shall issue its  
19 findings in writing.

20        (12) Any party aggrieved by a final decision of the superior court  
21 issued pursuant to this section may appeal the decision in accordance  
22 with court rules.

23        **Sec. 9.** RCW 36.70A.3201 and 2010 c 211 s 12 are each amended to  
24 read as follows:

25        The legislature intends that the ((~~board~~)) superior court applies  
26 a more deferential standard of review to actions of counties and cities  
27 than the preponderance of the evidence standard provided for under  
28 existing law. In recognition of the broad range of discretion that may  
29 be exercised by counties and cities consistent with the requirements of  
30 this chapter, the legislature intends for the ((~~board~~)) courts to grant  
31 deference to counties and cities in how they plan for growth,  
32 consistent with the requirements and goals of this chapter. Local  
33 comprehensive plans and development regulations require counties and  
34 cities to balance priorities and options for action in full  
35 consideration of local circumstances. The legislature finds that while  
36 this chapter requires local planning to take place within a framework

1 of state goals and requirements, the ultimate burden and responsibility  
2 for planning, harmonizing the planning goals of this chapter, and  
3 implementing a county's or city's future rests with that community.

4 **Sec. 10.** RCW 36.70A.340 and 2011 c 120 s 2 are each amended to  
5 read as follows:

6 Upon receipt (~~((from the board))~~) of the growth management hearings  
7 board's finding or a court's finding that a state agency, county, or  
8 city is in noncompliance under RCW (~~((36.70A.330))~~) 36.70A.320(11), or as  
9 a result of failure to meet the requirements of RCW 36.70A.210, the  
10 governor may either:

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

13 (2) Notify and direct the state treasurer to withhold the portion  
14 of revenues to which the county or city is entitled under one or more  
15 of the following: The motor vehicle fuel tax, as provided in chapter  
16 82.36 RCW; the transportation improvement account, as provided in RCW  
17 47.26.084; the rural arterial trust account, as provided in RCW  
18 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the  
19 liquor profit tax, as provided in RCW 66.08.190; and the liquor excise  
20 tax, as provided in RCW 82.08.170; or

21 (3) File a notice of noncompliance with the secretary of state and  
22 the county or city, which shall temporarily rescind the county or  
23 city's authority to collect the real estate excise tax under RCW  
24 82.46.030 until the governor files a notice rescinding the notice of  
25 noncompliance.

26 **Sec. 11.** RCW 36.70A.345 and 2010 c 211 s 13 are each amended to  
27 read as follows:

28 The governor may impose a sanction or sanctions specified under RCW  
29 36.70A.340 on: (1) A county or city that fails to designate critical  
30 areas, agricultural lands, forest lands, or mineral resource lands  
31 under RCW 36.70A.170 by the date such action was required to have been  
32 taken; (2) a county or city that fails to adopt development regulations  
33 under RCW 36.70A.060 protecting critical areas or conserving  
34 agricultural lands, forest lands, or mineral resource lands by the date  
35 such action was required to have been taken; (3) a county that fails to  
36 designate urban growth areas under RCW 36.70A.110 by the date such

1 action was required to have been taken; and (4) a county or city that  
2 fails to adopt its comprehensive plan or development regulations when  
3 such actions are required to be taken.

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

15 **Sec. 12.** RCW 82.46.030 and 2000 c 103 s 17 are each amended to  
16 read as follows:

17 (1) The county treasurer shall place one percent of the proceeds of  
18 the taxes imposed under this chapter in the county current expense fund  
19 to defray costs of collection.

20 (2) The remaining proceeds from the county tax under RCW  
21 82.46.010(2) shall be placed in a county capital improvements fund.  
22 The remaining proceeds from city or town taxes under RCW 82.46.010(2)  
23 shall be distributed to the respective cities and towns monthly and  
24 placed by the city treasurer in a municipal capital improvements fund.

25 (3) This section does not limit the existing authority of any city,  
26 town, or county to impose special assessments on property specially  
27 benefited thereby in the manner prescribed by law.

28 (4) This section is subject to RCW 36.70A.345.

29 **Sec. 13.** RCW 43.21B.005 and 2010 c 210 s 4 and 2010 1st sp.s. c 7  
30 s 39 are each reenacted and amended to read as follows:

31 (1) There is created an environmental and land use hearings office  
32 of the state of Washington. The environmental and land use hearings  
33 office consists of the pollution control hearings board created in RCW  
34 43.21B.010(~~(7)~~) and the shorelines hearings board created in RCW  
35 90.58.170(~~(7)~~, ~~and the growth management hearings board created in RCW~~  
36 ~~36.70A.250.~~ ~~The governor shall designate one of the members of the~~

1 ~~pollution control hearings board or growth management hearings board to~~  
2 ~~be the director of the environmental and land use hearings office~~  
3 ~~during the term of the governor)).~~ Membership, powers, functions, and  
4 duties of the pollution control hearings board((7)) and the shorelines  
5 hearings board((7, and the growth management hearings board)) shall be  
6 as provided by law.

7 (2) The director of the environmental and land use hearings office  
8 may appoint one or more administrative appeals judges in cases before  
9 the environmental boards and((7, with the consent of the chair of the  
10 ~~growth management hearings board,~~7)) one or more hearing examiners in  
11 cases before the land use board comprising the office. The  
12 administrative appeals judges shall possess the powers and duties  
13 conferred by the administrative procedure act, chapter 34.05 RCW, have  
14 a demonstrated knowledge of environmental law, and shall be admitted to  
15 the practice of law in the state of Washington. ((The hearing  
16 ~~examiners possess the powers and duties provided for in RCW~~  
17 ~~36.70A.270-.)~~)

18 (3) Administrative appeals judges are not subject to chapter 41.06  
19 RCW. The administrative appeals judges appointed under subsection (2)  
20 of this section are subject to discipline and termination, for cause,  
21 by the director of the environmental and land use hearings office.  
22 Upon written request by the person so disciplined or terminated, the  
23 director of the environmental and land use hearings office shall state  
24 the reasons for such action in writing. The person affected has a  
25 right of review by the superior court of Thurston county on petition  
26 for reinstatement or other remedy filed within thirty days of receipt  
27 of such written reasons.

28 (4) The director of the environmental and land use hearings office  
29 may appoint, discharge, and fix the compensation of such administrative  
30 or clerical staff as may be necessary.

31 (5) The director of the environmental and land use hearings office  
32 may also contract for required services.

33 NEW SECTION. **Sec. 14.** The following acts or parts of acts are  
34 each repealed:

35 (1) RCW 36.70A.250 (Growth management hearings board--Creation--  
36 Members) and 2010 c 211 s 4, 1994 c 249 s 29, & 1991 sp.s. c 32 s 5;

1 (2) RCW 36.70A.252 (Growth management hearings board--Consolidation  
2 into environmental and land use hearings office) and 2010 c 210 s 15;

3 (3) RCW 36.70A.260 (Growth management hearings board--Regional  
4 panels) and 2010 c 211 s 5, 1994 c 249 s 30, & 1991 sp.s. c 32 s 6;

5 (4) RCW 36.70A.270 (Growth management hearings board--Conduct,  
6 procedure, and compensation) and 2010 c 211 s 6, 2010 c 210 s 16, 1997  
7 c 429 s 11, 1996 c 325 s 1, 1994 c 257 s 1, & 1991 sp.s. c 32 s 7;

8 (5) RCW 36.70A.280 (Growth management hearings board--Matters  
9 subject to review) and 2011 c 360 s 17, 2010 c 211 s 7, 2008 c 289 s 5,  
10 2003 c 332 s 2, 1996 c 325 s 2, 1995 c 347 s 108, 1994 c 249 s 31, &  
11 1991 sp.s. c 32 s 9;

12 (6) RCW 36.70A.295 (Growth management hearings board--Direct  
13 judicial review) and 2010 c 211 s 9 & 1997 c 429 s 13;

14 (7) RCW 36.70A.300 (Final orders) and 1997 c 429 s 14, 1995 c 347  
15 s 110, & 1991 sp.s. c 32 s 11;

16 (8) RCW 36.70A.302 (Growth management hearings board--Determination  
17 of invalidity--Vesting of development permits--Interim controls) and  
18 2010 c 211 s 10 & 1997 c 429 s 16;

19 (9) RCW 36.70A.305 (Expedited review) and 1996 c 325 s 4;

20 (10) RCW 36.70A.330 (Noncompliance) and 1997 c 429 s 21, 1995 c 347  
21 s 112, & 1991 sp.s. c 32 s 14;

22 (11) RCW 36.70A.335 (Order of invalidity issued before July 27,  
23 1997) and 1997 c 429 s 22; and

24 (12) RCW 36.70A.903 (Transfer of powers, duties, and functions) and  
25 2010 c 210 s 43.

26 NEW SECTION. **Sec. 15.** A new section is added to chapter 36.70A  
27 RCW to read as follows:

28 (1) The growth management hearings board may not accept any new  
29 petitions after the effective date of this section. The board must  
30 issue a final order or dismissal of a case without prejudice in all of  
31 its cases on or before June 30, 2012. For the purposes of the board's  
32 review of all petitions received on or before the effective date of  
33 this section, the applicable provisions of chapter 36.70 RCW in effect  
34 on January 1, 2012, govern, except that the board's authority with  
35 regard to petitions ceases the effective date of section 16 of this  
36 act.

1 (2) The superior court may not review petitions remanded to a state  
2 agency, county, or city by the hearings board if the hearings board did  
3 not review the petition after remand.

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

7 (4) For the purpose of tolling any statute of limitations, an  
8 action under RCW 36.70A.290 is deemed commenced when a petition is  
9 filed with the growth management hearings board. However, (a) the  
10 petition must have been pending with the board on the effective date of  
11 this section and must have been dismissed without prejudice by the  
12 board; and (b) within thirty days of receipt of the order of dismissal  
13 by the board, the petition must have been filed in superior court on  
14 the same grounds as were brought before the board.

15 NEW SECTION. **Sec. 16.** (1) The growth management hearings board is  
16 abolished.

17 (2) All reports, documents, surveys, books, records, files, papers,  
18 or written material in the possession of the board must be delivered to  
19 the custody of the department of enterprise services for appropriate  
20 disbursement or to the appropriate party if there is evidence related  
21 to a pending case. All office furnishings, office equipment, motor  
22 vehicles, and other tangible property in the possession of the board  
23 must be transferred to the department of enterprise services.

24 (3) All funds, credits, or other assets held by the growth  
25 management hearings board must, on the effective date of this section,  
26 be transferred to the office of financial management. If any question  
27 arises as to the transfer of any funds, books, documents, records,  
28 papers, files, equipment, or other tangible property used or held by  
29 the growth management hearings board, the director of financial  
30 management shall make a determination as to the proper allocation and  
31 certify the same to the state agencies concerned.

32 (4) All existing contracts and obligations must be terminated or  
33 transferred to the office of financial management.

34 (5) All cases decided and all orders previously issued by the  
35 growth management hearings board remain in full force and effect and  
36 are not affected by this act.



1        NEW SECTION.   **Sec. 17.**   Sections 13, 14, and 16 of this act take  
2   effect July 1, 2012.

--- END ---