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SENATE BILL 6686

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State of Washington

54th Legislature

1996 Regular Session

By Senators A. Anderson, Oke, Zarelli and Swecker

Read first time 01/24/96. Referred to Committee on Government Operations.

1 AN ACT Relating to final orders of growth management hearings  
2 boards; and amending RCW 36.70A.300, 34.05.620, and 34.05.630.

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

4 **Sec. 1.** RCW 36.70A.300 and 1995 c 347 s 110 are each amended to  
5 read as follows:

6 (1) The board shall issue a final order within one hundred eighty  
7 days of receipt of the petition for review, or, when multiple petitions  
8 are filed, within one hundred eighty days of receipt of the last  
9 petition that is consolidated. Such a final order shall be based  
10 exclusively on whether or not a state agency, county, or city is in  
11 compliance with the requirements of this chapter, chapter 90.58 RCW as  
12 it relates to adoption or amendment of shoreline master programs, or  
13 chapter 43.21C RCW as it relates to plans, development regulations, and  
14 amendments thereto, adopted under RCW 36.70A.040 or chapter 90.58 RCW.  
15 In the final order, the board shall either: (a) Find that the state  
16 agency, county, or city is in compliance with the requirements of this  
17 chapter or chapter 90.58 RCW as it relates to the adoption or amendment  
18 of shoreline master programs; or (b) find that the state agency,  
19 county, or city is not in compliance with the requirements of this

1 chapter or chapter 90.58 RCW as it relates to the adoption or amendment  
2 of shoreline master programs, in which case the board shall remand the  
3 matter to the affected state agency, county, or city and specify a  
4 reasonable time not in excess of one hundred eighty days within which  
5 the state agency, county, or city shall comply with the requirements of  
6 this chapter.

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

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

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

17 (3) A determination of invalidity shall:

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

21 (b) Subject any development application that would otherwise vest  
22 after the date of the board's order to the local ordinance or  
23 resolution that both is enacted in response to the order of remand and  
24 determined by the board pursuant to RCW 36.70A.330 to comply with the  
25 requirements of this chapter.

26 (4) A determination affecting the validity of comprehensive plans  
27 and development regulations during the period of remand shall not take  
28 effect until affirmed by (a) the joint administrative rules review  
29 committee as provided under chapter 34.05 RCW, and (b) the governor.

30 (5) If the ordinance that adopts a plan or development regulation  
31 under this chapter includes a savings clause intended to revive prior  
32 policies or regulations in the event the new plan or regulations are  
33 determined to be invalid, the board shall determine under subsection  
34 (2) of this section whether the prior policies or regulations are valid  
35 during the period of remand.

36 ~~((+5))~~ (6) Any party aggrieved by a final decision of the hearings  
37 board may appeal the decision to superior court as provided in RCW  
38 34.05.514 or 36.01.050 within thirty days of the final order of the  
39 board.

1       **Sec. 2.** RCW 34.05.620 and 1994 c 249 s 17 are each amended to read  
2 as follows:

3       Whenever a majority of the members of the rules review committee  
4 determines that a proposed rule is not within the intent of the  
5 legislature as expressed in the statute which the rule implements, or  
6 that an agency may not be adopting a proposed rule in accordance with  
7 all applicable provisions of law, including (~~section 4 of this act~~  
8 ~~and~~)) chapter 19.85 RCW, the committee shall give the affected agency  
9 written notice of its decision. The notice shall be given at least  
10 seven days prior to any hearing scheduled for consideration of or  
11 adoption of the proposed rule pursuant to RCW 34.05.320. The notice  
12 shall include a statement of the review committee's findings and the  
13 reasons therefor. When the agency holds a hearing on the proposed  
14 rule, the agency shall consider the review committee's decision. Any  
15 determination by any growth management hearings board affecting the  
16 validity of comprehensive plans and development regulations reviewed by  
17 the joint administrative rules review committee shall be treated as a  
18 rule for the purposes of this section.

19       **Sec. 3.** RCW 34.05.630 and 1994 c 249 s 18 are each amended to read  
20 as follows:

21       (1) All rules required to be filed pursuant to RCW 34.05.380,  
22 (~~and~~)) emergency rules adopted pursuant to RCW 34.05.350, and  
23 determinations by any growth management hearings board affecting the  
24 validity of comprehensive plans and development regulations pursuant to  
25 RCW 36.70A.300 are subject to selective review by the legislature.

26       (2) The rules review committee may review an agency's use of policy  
27 statements, guidelines, and issuances that are of general  
28 applicability, or their equivalents to determine whether or not an  
29 agency has failed to adopt a rule or whether they are within the intent  
30 of the legislature as expressed by the governing statute.

31       (3) If the rules review committee finds by a majority vote of its  
32 members: (a) That an existing rule is not within the intent of the  
33 legislature as expressed by the statute which the rule implements, (b)  
34 that the rule has not been adopted in accordance with all applicable  
35 provisions of law, including (~~section 4 of this act if the rule was~~  
36 ~~adopted after the effective date of section 4 of this act and~~)) chapter  
37 19.85 RCW, (c) that an agency is using a policy statement, guideline,  
38 or issuance in place of a rule, or (d) that the policy statement,

1 guideline, or issuance is outside of legislative intent, the agency  
2 affected shall be notified of such finding and the reasons therefor.  
3 Within thirty days of the receipt of the rules review committee's  
4 notice, the agency shall file notice of a hearing on the rules review  
5 committee's finding with the code reviser and mail notice to all  
6 persons who have made timely request of the agency for advance notice  
7 of its rule-making proceedings as provided in RCW 34.05.320. The  
8 agency's notice shall include the rules review committee's findings and  
9 reasons therefor, and shall be published in the Washington state  
10 register in accordance with the provisions of chapter 34.08 RCW.

11 (4) The agency shall consider fully all written and oral  
12 submissions regarding (a) whether the rule in question is within the  
13 intent of the legislature as expressed by the statute which the rule  
14 implements, (b) whether the rule was adopted in accordance with all  
15 applicable provisions of law, including (~~section 4 of this act if the~~  
16 ~~rule was adopted after the effective date of section 4 of this act~~  
17 ~~and~~)) chapter 19.85 RCW, (c) whether the agency is using a policy  
18 statement, guideline, or issuance in place of a rule, or (d) whether  
19 the policy statement, guideline, or issuance is within the legislative  
20 intent.

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