

2 **SSB 6637 - H AMD 430 ADOPTED 3-1-96**

3 By Representatives Van Luven and Reams

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5 Strike everything after the enacting clause and insert the
6 following:

7 **"Sec. 1.** RCW 36.70A.010 and 1990 1st ex.s. c 17 s 1 are each
8 amended to read as follows:

9 The legislature finds that uncoordinated and unplanned growth,
10 together with a lack of common goals expressing the public's interest
11 in the conservation and the wise use of our lands, pose a threat to the
12 environment, sustainable economic development, and the health, safety,
13 and high quality of life enjoyed by residents of this state. It is in
14 the public interest that citizens, communities, local governments, and
15 the private sector cooperate and coordinate with one another in
16 comprehensive land use planning. The legislature further finds that
17 many of the decisions by the growth management hearings boards have not
18 accorded adequate deference to planning choices made by counties and
19 cities. The legislature restates its intention that implementation of
20 the growth management act focus on locally developed and locally
21 implemented strategies to manage population growth, rather than
22 planning decisions made at the state or regional level. Further, the
23 legislature finds that it is in the public interest that economic
24 development programs be shared with communities experiencing
25 insufficient economic growth.

26 **Sec. 2.** RCW 36.70A.020 and 1990 1st ex.s. c 17 s 2 are each
27 amended to read as follows:

28 The following goals are adopted to guide the development and
29 adoption of comprehensive plans and development regulations of those
30 counties and cities that are required or choose to plan under RCW
31 36.70A.040. This chapter does not establish or require that the
32 following goals be given any particular priority. The growth
33 management hearings boards, in any of their decisions, shall have no
34 discretion to prioritize, balance, or rank these goals. The following
35 goals are not listed in order of priority and shall be used exclusively

1 for the purpose of guiding the development of comprehensive plans and
2 development regulations:

3 (1) Urban growth. Encourage development in urban areas where
4 adequate public facilities and services exist or can be provided in an
5 efficient manner.

6 (2) Reduce sprawl. Reduce the inappropriate conversion of
7 undeveloped land into sprawling, low-density development.

8 (3) Transportation. Encourage efficient multimodal transportation
9 systems that are based on regional priorities and coordinated with
10 county and city comprehensive plans.

11 (4) Housing. Encourage the availability of affordable housing to
12 all economic segments of the population of this state, promote a
13 variety of residential densities and housing types, and encourage
14 preservation of existing housing stock.

15 (5) Economic development. Encourage economic development
16 throughout the state that is consistent with adopted comprehensive
17 plans, promote economic opportunity for all citizens of this state,
18 especially for unemployed and for disadvantaged persons, and encourage
19 growth in areas experiencing insufficient economic growth, all within
20 the capacities of the state's natural resources, public services, and
21 public facilities.

22 (6) Property rights. Private property shall not be taken for
23 public use without just compensation having been made. The property
24 rights of landowners shall be protected from arbitrary and
25 discriminatory actions.

26 (7) Permits. Applications for both state and local government
27 permits should be processed in a timely and fair manner to ensure
28 predictability.

29 (8) Natural resource industries. Maintain and enhance natural
30 resource-based industries, including productive timber, agricultural,
31 and fisheries industries. Encourage the conservation of productive
32 forest lands and productive agricultural lands, and discourage
33 incompatible uses.

34 (9) Open space and recreation. Encourage the retention of open
35 space and development of recreational opportunities, conserve fish and
36 wildlife habitat, increase access to natural resource lands and water,
37 and develop parks.

1 (10) Environment. Protect the environment and enhance the state's
2 high quality of life, including air and water quality, and the
3 availability of water.

4 (11) Citizen participation and coordination. Encourage the
5 involvement of citizens in the planning process and ensure coordination
6 between communities and jurisdictions to reconcile conflicts.

7 (12) Public facilities and services. Ensure that those public
8 facilities and services necessary to support development shall be
9 adequate to serve the development at the time the development is
10 available for occupancy and use without decreasing current service
11 levels below locally established minimum standards.

12 (13) Historic preservation. Identify and encourage the
13 preservation of lands, sites, and structures, that have historical or
14 archaeological significance.

15 **Sec. 3.** RCW 36.70A.280 and 1995 c 347 s 108 are each amended to
16 read as follows:

17 (1) A growth management hearings board (~~((shall))~~) may exercise its
18 discretion to hear and determine only those petitions alleging either:

19 (a) That an action of a state agency, county, or city planning
20 under this chapter (~~((is not in compliance with the requirements of this~~
21 ~~chapter,))~~) or chapter 90.58 RCW as it relates to the adoption of
22 shoreline master programs or amendments thereto, or chapter 43.21C RCW
23 as it relates to plans, development regulations, or amendments, adopted
24 under RCW 36.70A.040 or chapter 90.58 RCW is not supported by
25 substantial evidence in the record developed before the state agency,
26 county, or city; or

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

30 (2) A (~~((petition may be filed only by the state, a county or city~~
31 ~~that plans under this chapter, a person who has either appeared before~~
32 ~~the county or city regarding the matter on which a review is being~~
33 ~~requested or is certified by the governor within sixty days of filing~~
34 ~~the request with the board, or a person qualified pursuant to RCW~~
35 ~~34.05.530))~~) board has discretion to consider only petitions filed by a
36 state agency, a county or a city that plans under this chapter, or a
37 person. The petitioner must demonstrate that it: Has participated in
38 the public adoption process of the county or city regarding the matter

1 on which a review is being requested; can demonstrate that each issue
2 presented in the petition for review was presented by the petitioner on
3 the record during the public adoption process; and can demonstrate the
4 petitioner's interests will suffer specific and perceptible harm if the
5 action of the county or city is not reviewed.

6 (3) For purposes of this section "person" means any individual,
7 partnership, corporation, association, governmental subdivision or unit
8 thereof, or public or private organization or entity of any character.

9 (4) When considering a possible adjustment to a growth management
10 planning population projection prepared by the office of financial
11 management, a board shall consider the implications of any such
12 adjustment to the population forecast for the entire state.

13 The rationale for any adjustment that is adopted by a board must be
14 documented and filed with the office of financial management within ten
15 working days after adoption.

16 If adjusted by a board, a county growth management planning
17 population projection shall only be used for the planning purposes set
18 forth in this chapter and shall be known as a "board adjusted
19 population projection". None of these changes shall affect the
20 official state and county population forecasts prepared by the office
21 of financial management, which shall continue to be used for state
22 budget and planning purposes.

23 **Sec. 4.** RCW 36.70A.290 and 1995 c 347 s 109 are each amended to
24 read as follows:

25 (1) All requests for review to a growth management hearings board
26 shall be initiated by filing a petition that includes a detailed
27 statement of issues presented for resolution by the board.

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

33 (a) Except as provided in (c) of this subsection, the date of
34 publication for a city shall be the date the city publishes the
35 ordinance, or summary of the ordinance, adopting the comprehensive plan
36 or development regulations, or amendment thereto, as is required to be
37 published.

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

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

8 (c) For local governments planning under RCW 36.70A.040, promptly
9 after approval or disapproval of a local government s shoreline master
10 program or amendment thereto by the department of ecology as provided
11 in RCW 90.58.090, the local government shall publish a notice that the
12 shoreline master program or amendment thereto has been approved or
13 disapproved by the department of ecology. For purposes of this
14 section, the date of publication for the adoption or amendment of a
15 shoreline master program is the date the local government publishes
16 notice that the shoreline master program or amendment thereto has been
17 approved or disapproved by the department of ecology.

18 (3) Unless the board dismisses the petition as frivolous or finds
19 that the person filing the petition lacks standing, the board shall,
20 within ten days of receipt of the petition, set a time for hearing the
21 matter.

22 (4) The ~~((board shall base its))~~ board's discretion is limited to
23 issuing a decision based solely on the record developed by the city,
24 county, or the state ~~((and supplemented with additional evidence if the~~
25 ~~board determines that such additional evidence would be necessary or of~~
26 ~~substantial assistance to the board in reaching its decision))~~.

27 (5) The board~~((7))~~ shall consolidate, when appropriate, all
28 petitions involving the review of the same comprehensive plan or the
29 same development regulation or regulations.

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

32 (1) The board shall issue a final order within one hundred eighty
33 days of receipt of the petition for review, or, when multiple petitions
34 are filed, within one hundred eighty days of receipt of the last
35 petition that is consolidated. Such a final order shall be based
36 exclusively on ~~((whether or not a state agency, county, or city is in~~
37 ~~compliance with the requirements of this chapter, chapter 90.58 RCW as~~
38 ~~it relates to adoption or amendment of shoreline master programs, or~~

1 chapter 43.21C RCW as it relates to plans, development regulations, and
2 amendments thereto, adopted under RCW 36.70A.040 or chapter 90.58 RCW.
3 In the final order, the board shall either:— (a) Find that the state
4 agency, county, or city is in compliance with the requirements of this
5 chapter or chapter 90.58 RCW as it relates to the adoption or amendment
6 of shoreline master programs; or (b) find that the state agency,
7 county, or city is not in compliance with the requirements of this
8 chapter or chapter 90.58 RCW as it relates to the adoption or amendment
9 of shoreline master programs, in which case the board shall remand the
10 matter to the affected state agency, county, or city and)) the matters
11 within the board's discretion set forth in RCW 36.70A.280. The final
12 order shall specify a reasonable time not in excess of one hundred
13 eighty days within which the state agency, county, or city shall comply
14 with the requirements of this chapter.

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

18 (a) Includes a determination, supported by findings of fact and
19 conclusions of law, that the continued validity of the plan or
20 regulation would substantially interfere with the fulfillment of the
21 goals of this chapter; and

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

25 (3) A determination of invalidity shall:

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

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

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

1 ~~(5))~~. The boards do not have discretion to invalidate or make
2 ineffective plans or development regulations during the period of
3 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 **Sec. 6.** RCW 36.70A.320 and 1995 c 347 s 111 are each amended to
8 read as follows:

9 (1) Except as provided in subsection (2) of this section,
10 comprehensive plans and development regulations, ~~((and))~~ amendments
11 thereto, and any other required actions adopted under this chapter are
12 presumed valid upon adoption. In any petition ~~((under this chapter,~~
13 ~~the board, after full consideration of the petition, shall determine~~
14 ~~whether there is compliance with the requirements of this chapter. In~~
15 ~~making its determination))~~, the board shall consider the criteria
16 adopted by the department under RCW 36.70A.190(4). The board shall not
17 have the discretion to substitute its own interpretation of this
18 chapter for the interpretation made by the county or city acting under
19 this chapter. The board shall defer to the county or city as to how
20 the county or city balanced the goals set forth in RCW 36.70A.020 in
21 the development of its comprehensive plan, development regulations,
22 amendments thereto, and any other required actions adopted under this
23 chapter. The board shall find compliance ((unless)) if it finds ((by
24 ~~a preponderance of the evidence))~~ that the interpretation or
25 application of this chapter by the state agency, county, or city
26 ~~((erroneously interpreted or applied this chapter))~~ is supported by
27 substantial evidence in the record developed before the state agency,
28 county, or city.

29 (2) The shoreline element of a comprehensive plan and the
30 applicable development regulations adopted by a county or city shall
31 take effect as provided in chapter 90.58 RCW.

32 **Sec. 7.** RCW 36.70A.330 and 1995 c 347 s 112 are each amended to
33 read as follows:

34 (1) After the time set for complying with the requirements of this
35 chapter under RCW 36.70A.300(1)~~((b))~~ has expired, or at an earlier
36 time upon the motion of a county or city ~~((subject to a determination~~
37 ~~of invalidity under RCW 36.70A.300))~~, the board shall set a hearing for

1 the purpose of determining whether the state agency, county, or city is
2 in compliance with the requirements of this chapter.

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

12 (3) If the board finds that the state agency, county, or city is
13 not in compliance, the board shall transmit its finding to the
14 governor. The board may recommend to the governor that the sanctions
15 authorized by this chapter be imposed.

16 ~~((4) The board shall also reconsider its final order and decide:~~

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

20 ~~(b) If no determination of invalidity has been made, whether one~~
21 ~~now should be made under the standards in RCW 36.70A.300(2).~~

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

24 NEW SECTION. Sec. 8. It is the intent of the legislature that the
25 discretion given to growth management hearings boards in chapter 347,
26 Laws of 1995, to determine that a plan or regulation is invalid is null
27 and void. Any board's exercise of discretion to determine a plan or
28 regulations invalid made at any time is null, void, and of no effect.
29 The legislature intends that this act have retroactive application and
30 apply to determinations of invalidity made before, on, and after the
31 effective date of this act."

32 **SSB 6637** - H AMD
33 By Representative

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35 On page 1, line 2 of the title, after "discretion;" strike the
36 remainder of the title and insert "amending RCW 36.70A.010, 36.70A.020,

1 36.70A.280, 36.70A.290, 36.70A.300, 36.70A.320, and 36.70A.330; and
2 creating a new section."

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