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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: AMH-S/96

ATTY/TYPIST: BR:mmc

BRIEF TITLE:

2 **SSB 6637** - H COMM AMD

3 By Committee on Government Operations

4 ADOPTED AS AMENDED 3/1/96

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 COMM AMD

33 By Committee on Government Operations

34

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."

--- END ---