

2 **SSB 6637** - H COMM AMD **ADOPTED 3-1-96**
3 By Committee on Government Operations

4

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

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

9 The following goals are adopted to guide the development and
10 adoption of comprehensive plans and development regulations of those
11 counties and cities that are required or choose to plan under RCW
12 36.70A.040. This chapter does not establish or require that the
13 following goals be given any particular priority. The growth
14 management hearings boards have no discretion to prioritize, balance,
15 or rank these goals. The following goals are not listed in order of
16 priority and shall be used exclusively for the purpose of guiding the
17 development of comprehensive plans and development regulations:

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

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

23 (3) Transportation. Encourage efficient multimodal transportation
24 systems that are based on regional priorities and coordinated with
25 county and city comprehensive plans.

26 (4) Housing. Encourage the availability of affordable housing to
27 all economic segments of the population of this state, promote a
28 variety of residential densities and housing types, and encourage
29 preservation of existing housing stock.

30 (5) Economic development. Encourage economic development
31 throughout the state that is consistent with adopted comprehensive
32 plans, promote economic opportunity for all citizens of this state,
33 especially for unemployed and for disadvantaged persons, and encourage
34 growth in areas experiencing insufficient economic growth, all within
35 the capacities of the state's natural resources, public services, and
36 public facilities.

1 (6) Property rights. Private property shall not be taken for
2 public use without just compensation having been made. The property
3 rights of landowners shall be protected from arbitrary and
4 discriminatory actions.

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

8 (8) Natural resource industries. Maintain and enhance natural
9 resource-based industries, including productive timber, agricultural,
10 and fisheries industries. Encourage the conservation of productive
11 forest lands and productive agricultural lands, and discourage
12 incompatible uses.

13 (9) Open space and recreation. Encourage the retention of open
14 space and development of recreational opportunities, conserve fish and
15 wildlife habitat, increase access to natural resource lands and water,
16 and develop parks.

17 (10) Environment. Protect the environment and enhance the state's
18 high quality of life, including air and water quality, and the
19 availability of water.

20 (11) Citizen participation and coordination. Encourage the
21 involvement of citizens in the planning process and ensure coordination
22 between communities and jurisdictions to reconcile conflicts.

23 (12) Public facilities and services. Ensure that those public
24 facilities and services necessary to support development shall be
25 adequate to serve the development at the time the development is
26 available for occupancy and use without decreasing current service
27 levels below locally established minimum standards.

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

31 **Sec. 2.** RCW 36.70A.290 and 1995 c 347 s 109 are each amended to
32 read as follows:

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

36 (2) All petitions relating to whether or not an adopted
37 comprehensive plan, development regulation, or permanent amendment
38 thereto, is in compliance with the goals and requirements of this

1 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days
2 after publication by the legislative bodies of the county or city.

3 (a) Except as provided in (c) of this subsection, the date of
4 publication for a city shall be the date the city publishes the
5 ordinance, or summary of the ordinance, adopting the comprehensive plan
6 or development regulations, or amendment thereto, as is required to be
7 published.

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

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

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

25 (3) Unless the board dismisses the petition as frivolous or finds
26 that the person filing the petition lacks standing, the board shall,
27 within ten days of receipt of the petition, set a time for hearing the
28 matter.

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

34 (5) The board, shall consolidate, when appropriate, all petitions
35 involving the review of the same comprehensive plan or the same
36 development regulation or regulations.

37 **Sec. 3.** RCW 36.70A.300 and 1995 c 347 s 110 are each amended to
38 read as follows:

1 (1) The board shall issue a final order within one hundred eighty
2 days of receipt of the petition for review, or, when multiple petitions
3 are filed, within one hundred eighty days of receipt of the last
4 petition that is consolidated. Such a final order shall be based
5 exclusively on (~~whether or not a state agency, county, or city is in~~
6 ~~compliance with the requirements of this chapter, chapter 90.58 RCW as~~
7 ~~it relates to adoption or amendment of shoreline master programs, or~~
8 ~~chapter 43.21C RCW as it relates to plans, development regulations, and~~
9 ~~amendments thereto, adopted under RCW 36.70A.040 or chapter 90.58 RCW.~~
10 ~~In the final order, the board shall either: (a) Find that the state~~
11 ~~agency, county, or city is in compliance with the requirements of this~~
12 ~~chapter or chapter 90.58 RCW as it relates to the adoption or amendment~~
13 ~~of shoreline master programs; or (b) find that the state agency,~~
14 ~~county, or city is not in compliance with the requirements of this~~
15 ~~chapter or chapter 90.58 RCW as it relates to the adoption or amendment~~
16 ~~of shoreline master programs, in which case the board shall remand the~~
17 ~~matter to the affected state agency, county, or city and)) the matters~~
18 ~~within the board's discretion set forth in RCW 36.70A.280. The final~~
19 ~~order shall specify a reasonable time not in excess of one hundred~~
20 ~~eighty days within which the state agency, county, or city shall comply~~
21 ~~with the requirements of this chapter.~~

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

25 ~~(a) Includes a determination, supported by findings of fact and~~
26 ~~conclusions of law, that the continued validity of the plan or~~
27 ~~regulation would substantially interfere with the fulfillment of the~~
28 ~~goals of this chapter; and~~

29 ~~(b) Specifies the particular part or parts of the plan or~~
30 ~~regulation that are determined to be invalid, and the reasons for their~~
31 ~~invalidity.~~

32 (3) A determination of invalidity shall:

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

36 (b) Subject any development application that would otherwise vest
37 after the date of the board's order to the local ordinance or
38 resolution that both is enacted in response to the order of remand and

1 determined by the board pursuant to RCW 36.70A.330 to comply with the
2 requirements of this chapter.

3 ~~(4) If the ordinance that adopts a plan or development regulation~~
4 ~~under this chapter includes a savings clause intended to revive prior~~
5 ~~policies or regulations in the event the new plan or regulations are~~
6 ~~determined to be invalid, the board shall determine under subsection~~
7 ~~(2) of this section whether the prior policies or regulations are valid~~
8 ~~during the period of remand)). The boards do not have discretion to~~
9 ~~invalidate or make ineffective plans or development regulations during~~
10 ~~the period of remand. Consequently, all development permits shall vest~~
11 ~~under such comprehensive plans or development regulations until new~~
12 ~~comprehensive plans or development regulations are adopted.~~

13 ~~((5))~~ (3) Any party aggrieved by a final decision of the hearings
14 board may appeal the decision to superior court as provided in RCW
15 34.05.514 or 36.01.050 within thirty days of the final order of the
16 board.

17 **Sec. 4.** RCW 36.70A.320 and 1995 c 347 s 111 are each amended to
18 read as follows:

19 (1) Except as provided in subsection (2) of this section,
20 comprehensive plans and development regulations, ~~((and))~~ amendments
21 thereto, and any other regulations adopted under this chapter are
22 presumed valid upon adoption. In any petition under this chapter, the
23 board, after full consideration of the petition, shall determine
24 whether there is compliance with ~~((the requirements of))~~ this chapter.
25 In making its determination, the board shall consider the criteria
26 adopted by the department under RCW 36.70A.190(4). The board shall
27 defer to the city or county as to how the city or county has balanced
28 the goals set forth in RCW 36.70A.020 in the development of its
29 comprehensive plans and development regulations. The board shall find
30 compliance unless it finds ~~((by a preponderance of the evidence))~~ that
31 the petitioner has demonstrated the interpretation or application of
32 this chapter by the state agency, county, or city ~~((erroneously~~
33 ~~interpreted or applied this chapter))~~ is not supported by substantial
34 evidence when reviewed in light of the whole record before the city or
35 county.

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

1 **Sec. 5.** RCW 36.70A.330 and 1995 c 347 s 112 are each amended to
2 read as follows:

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

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

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

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

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

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

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

30 NEW SECTION. **Sec. 6.** It is the intent of the legislature that the
31 discretion given to growth management hearings boards in chapter 347,
32 Laws of 1995 to determine that a plan or regulation is invalid is null
33 and void. Any board's exercise of discretion to determine a plan or
34 regulations invalid made at any time is null, void, and of no effect.
35 The legislature intends that this act have retroactive application and
36 apply to determinations of invalidity made before, on, and after the
37 effective date of this act."

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4 On page 1, line 2 of the title, after "discretion;" strike the
5 remainder of the title and insert "amending RCW 36.70A.020, 36.70A.290,
6 36.70A.300, 36.70A.320, and 36.70A.330; and creating a new section."

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