
HOUSE BILL 3123

State of Washington 58th Legislature 2004 Regular Session

By Representatives Simpson, G., Dunshee, Clibborn and Chase

Read first time 01/28/2004. Referred to Committee on Local Government.

1 AN ACT Relating to clarifying the effect of the expiration of
2 remand periods and determinations of invalidity; and amending RCW
3 36.70A.300 and 36.70A.302.

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

5 **Sec. 1.** RCW 36.70A.300 and 1997 c 429 s 14 are each amended to
6 read as follows:

7 (1) The board shall issue a final order that shall be based
8 exclusively on whether or not a state agency, county, or city is in
9 compliance with the requirements of this chapter, chapter 90.58 RCW as
10 it relates to adoption or amendment of shoreline master programs, or
11 chapter 43.21C RCW as it relates to adoption of plans, development
12 regulations, and amendments thereto, under RCW 36.70A.040 or chapter
13 90.58 RCW.

14 (2)(a) Except as provided in (b) of this subsection, the final
15 order shall be issued within one hundred eighty days of receipt of the
16 petition for review, or, if multiple petitions are filed, within one
17 hundred eighty days of receipt of the last petition that is
18 consolidated.

1 (b) The board may extend the period of time for issuing a decision
2 to enable the parties to settle the dispute if additional time is
3 necessary to achieve a settlement, and (i) an extension is requested by
4 all parties, or (ii) an extension is requested by the petitioner and
5 respondent and the board determines that a negotiated settlement
6 between the remaining parties could resolve significant issues in
7 dispute. The request must be filed with the board not later than seven
8 days before the date scheduled for the hearing on the merits of the
9 petition. The board may authorize one or more extensions for up to
10 ninety days each, subject to the requirements of this section.

11 (3) In the final order, the board shall either:

12 (a) Find that the state agency, county, or city is in compliance
13 with the requirements of this chapter, chapter 90.58 RCW as it relates
14 to the adoption or amendment of shoreline master programs, or chapter
15 43.21C RCW as it relates to adoption of plans, development regulations,
16 and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

17 (b) Find that the state agency, county, or city is not in
18 compliance with the requirements of this chapter, chapter 90.58 RCW as
19 it relates to the adoption or amendment of shoreline master programs,
20 or chapter 43.21C RCW as it relates to adoption of plans, development
21 regulations, and amendments thereto, under RCW 36.70A.040 or chapter
22 90.58 RCW, in which case the board shall remand the matter to the
23 affected state agency, county, or city. The board shall specify a
24 reasonable time not in excess of one hundred eighty days, or such
25 longer period as determined by the board in cases of unusual scope or
26 complexity, within which the state agency, county, or city shall comply
27 with the requirements of this chapter. The board may require periodic
28 reports to the board on the progress the jurisdiction is making towards
29 compliance.

30 (4) Unless the board makes a determination of invalidity as
31 provided in RCW 36.70A.302, a finding of noncompliance and an order of
32 remand shall not affect the validity of comprehensive plans ~~((and))~~,
33 development regulations, and shoreline master programs, during the
34 period of remand or until a compliant comprehensive plan, development
35 regulation, or shoreline master program is adopted, whichever is later.

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

1 **Sec. 2.** RCW 36.70A.302 and 1997 c 429 s 16 are each amended to
2 read as follows:

3 (1) A board may determine that part or all of a comprehensive plan
4 or development regulations are invalid if the board:

5 (a) Makes a finding of noncompliance and issues an order of remand
6 under RCW 36.70A.300;

7 (b) Includes in the final order a determination, supported by
8 findings of fact and conclusions of law, that the continued validity of
9 part or parts of the plan or regulation would substantially interfere
10 with the fulfillment of the goals of this chapter; and

11 (c) Specifies in the final order the particular part or parts of
12 the plan or regulation that are determined to be invalid, and the
13 reasons for their invalidity.

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

21 (3)(a) Except as otherwise provided in subsection (2) of this
22 section and (b) of this subsection, a development permit application
23 not vested under state or local law before receipt of the board's order
24 by the county or city vests to and must comply with the local ordinance
25 or resolution that is adopted or readopted after the determination of
26 invalidity is made and is determined by the board not to substantially
27 interfere with the fulfillment of the goals of this chapter.

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

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

37 (ii) A building permit and related construction permits for

1 remodeling, tenant improvements, or expansion of an existing structure
2 on a lot existing before receipt of the board's order by the county or
3 city; and

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

7 (4) If the ordinance that adopts a plan or development regulation
8 under this chapter includes a savings clause intended to revive prior
9 policies or regulations in the event the new plan or regulations are
10 determined to be invalid, the board shall determine under subsection
11 (1) of this section whether the prior policies or regulations are valid
12 during the period of remand.

13 (5) A county or city subject to a determination of invalidity may
14 adopt interim controls and other measures to be in effect until it
15 adopts a comprehensive plan and development regulations that comply
16 with the requirements of this chapter. A development permit
17 application may vest under an interim control or measure upon
18 determination by the board that the interim controls and other measures
19 do not substantially interfere with the fulfillment of the goals of
20 this chapter.

21 (6) A county or city subject to a determination of invalidity may
22 file a motion requesting that the board clarify, modify, or rescind the
23 order. The board shall expeditiously schedule a hearing on the motion.
24 At the hearing on the motion, the parties may present information to
25 the board to clarify the part or parts of the comprehensive plan or
26 development regulations to which the final order applies. The board
27 shall issue any supplemental order based on the information provided at
28 the hearing not later than thirty days after the date of the hearing.

29 (7)(a) If a determination of invalidity has been made and the
30 county or city has enacted an ordinance or resolution amending the
31 invalidated part or parts of the plan or regulation or establishing
32 interim controls on development affected by the order of invalidity,
33 after a compliance hearing, the board shall modify or rescind the
34 determination of invalidity if it determines under the standard in
35 subsection (1) of this section that the plan or regulation, as amended
36 or made subject to such interim controls, will no longer substantially
37 interfere with the fulfillment of the goals of this chapter.

1 (b) If the board determines that part or parts of the plan or
2 regulation are no longer invalid as provided in this subsection, but
3 does not find that the plan or regulation is in compliance with all of
4 the requirements of this chapter, the board, in its order, may require
5 periodic reports to the board on the progress the jurisdiction is
6 making towards compliance.

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