
SENATE BILL 5354

State of Washington

58th Legislature

2003 Regular Session

By Senators Haugen, Swecker, Doumit, Morton, Rasmussen, Mulliken, Hargrove, Horn and Stevens

Read first time 01/22/2003. Referred to Committee on Land Use & Planning.

1 AN ACT Relating to the deference due cities and counties in growth
2 management planning matters before hearings boards, and superior and
3 appellate courts; amending RCW 36.70A.020, 36.70A.060, 36.70A.172, and
4 36.70A.320; and adding a new section to chapter 36.70A RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 36.70A RCW
7 to read as follows:

8 The legislature finds that the scope and breadth of decisions by
9 the three growth management hearings boards and courts on appeal exceed
10 legislative intent for review of local growth management choices
11 resulting in erosion of the confidence of the public and of locally
12 elected officials in growth management planning. The legislature finds
13 that many decisions by growth management hearings boards, and superior
14 and appellate courts have not accorded adequate deference to planning
15 choices made by counties and cities. The legislature restates its
16 intention that implementation of the growth management act focus on
17 locally developed and locally implemented strategies including the
18 designation of natural resource and critical areas, rather than
19 planning based on decisions made at the state or regional level. The

1 purpose of this act is to reaffirm the validity of local decisions in
2 growth management planning and to clarify the role of the state and the
3 boards in the review and appeal of local plans and regulations.

4 **Sec. 2.** RCW 36.70A.020 and 2002 c 154 s 1 are each amended to read
5 as follows:

6 The following goals are adopted to guide the development and
7 adoption of comprehensive plans and development regulations of those
8 counties and cities that are required or choose to plan under RCW
9 36.70A.040. The following goals are not listed in order of priority
10 and it is the responsibility of each county and city planning under
11 this chapter to determine how to prioritize and balance these goals.
12 The goals shall be used exclusively for the purpose of guiding the
13 development of comprehensive plans and development regulations:

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

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

19 (3) Transportation. Encourage efficient multimodal transportation
20 systems that are based on regional priorities and coordinated with
21 county and city comprehensive plans.

22 (4) Housing. Encourage the availability of affordable housing to
23 all economic segments of the population of this state, promote a
24 variety of residential densities and housing types, and encourage
25 preservation of existing housing stock.

26 (5) Economic development. Encourage economic development
27 throughout the state that is consistent with adopted comprehensive
28 plans, promote economic opportunity for all citizens of this state,
29 especially for unemployed and for disadvantaged persons, promote the
30 retention and expansion of existing businesses and recruitment of new
31 businesses, recognize regional differences impacting economic
32 development opportunities, and encourage growth in areas experiencing
33 insufficient economic growth, all within the capacities of the state's
34 natural resources, public services, and public facilities.

35 (6) Property rights. Private property shall not be taken for
36 public use without just compensation having been made. The property

1 rights of landowners shall be protected from arbitrary and
2 discriminatory actions.

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

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

11 (9) Open space and recreation. Retain open space, enhance
12 recreational opportunities, conserve fish and wildlife habitat,
13 increase access to natural resource lands and water, and develop parks
14 and recreation facilities.

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

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

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

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

29 **Sec. 3.** RCW 36.70A.060 and 1998 c 286 s 5 are each amended to read
30 as follows:

31 (1) Each county that is required or chooses to plan under RCW
32 36.70A.040, and each city within such county, shall adopt development
33 regulations on or before September 1, 1991, to assure the conservation
34 of agricultural, forest, and mineral resource lands designated under
35 RCW 36.70A.170. Regulations adopted under this subsection may not
36 prohibit uses legally existing on any parcel prior to their adoption
37 and shall remain in effect until the county or city adopts development

1 regulations pursuant to RCW 36.70A.040. Such regulations shall assure
2 that the use of lands adjacent to agricultural, forest, or mineral
3 resource lands shall not interfere with the continued use, in the
4 accustomed manner and in accordance with best management practices, of
5 these designated lands for the production of food, agricultural
6 products, or timber, or for the extraction of minerals. Counties and
7 cities shall require that all plats, short plats, development permits,
8 and building permits issued for development activities on, or within
9 five hundred feet of, lands designated as agricultural lands, forest
10 lands, or mineral resource lands, contain a notice that the subject
11 property is within or near designated agricultural lands, forest lands,
12 or mineral resource lands on which a variety of commercial activities
13 may occur that are not compatible with residential development for
14 certain periods of limited duration. The notice for mineral resource
15 lands shall also inform that an application might be made for mining-
16 related activities, including mining, extraction, washing, crushing,
17 stockpiling, blasting, transporting, and recycling of minerals.

18 (2) Each county and city shall adopt development regulations that
19 protect critical areas that are required to be designated under RCW
20 36.70A.170. For counties and cities that are required or choose to
21 plan under RCW 36.70A.040, such development regulations shall be
22 adopted on or before September 1, 1991. For the remainder of the
23 counties and cities, such development regulations shall be adopted on
24 or before March 1, 1992.

25 (3) Such counties and cities shall review these designations and
26 development regulations when adopting their comprehensive plans under
27 RCW 36.70A.040 and implementing development regulations under RCW
28 36.70A.120 and may alter such designations and development regulations
29 to insure consistency.

30 (4) In adopting development regulations to protect natural resource
31 and critical areas, cities and counties have discretion to prioritize
32 and balance the requirements of this section. Deference shall be given
33 to the local decision-making process. Deference shall not be given to
34 state agency studies, guidelines, model ordinances, materials, or
35 planning guidance.

36 (5) Forest land and agricultural land located within urban growth
37 areas shall not be designated by a county or city as forest land or

1 agricultural land of long-term commercial significance under RCW
2 36.70A.170 unless the city or county has enacted a program authorizing
3 transfer or purchase of development rights.

4 **Sec. 4.** RCW 36.70A.172 and 1995 c 347 s 105 are each amended to
5 read as follows:

6 (1) In designating and protecting critical areas under this
7 chapter, counties and cities shall include, pursuant to RCW 36.70A.060,
8 the best available science in the process of developing policies and
9 development regulations to protect the functions and values of critical
10 areas. In addition, pursuant to RCW 36.70A.060, counties and cities
11 shall give special consideration to conservation or protection measures
12 necessary to preserve or enhance anadromous fisheries.

13 (2) If it determines that advice from scientific or other experts
14 is necessary or will be of substantial assistance in reaching its
15 decision, a growth management hearings board may retain scientific or
16 other expert advice to assist in reviewing a petition under RCW
17 36.70A.290 that involves critical areas.

18 **Sec. 5.** RCW 36.70A.320 and 1997 c 429 s 20 are each amended to
19 read as follows:

20 (1) Except as provided in subsection ~~((+5))~~ (6) of this section,
21 designations, comprehensive plans ~~((and))~~, development regulations,
22 other actions required under this chapter, and amendments thereto,
23 adopted under this chapter are presumed valid upon adoption.

24 (2) Except as otherwise provided in subsection ~~((+4))~~ (5) of this
25 section, the burden is on the petitioner to demonstrate that any action
26 taken by a state agency, county, or city under this chapter is not in
27 compliance with the requirements of this chapter.

28 (3) In any petition under this chapter, the board, after full
29 consideration of the petition, shall determine whether there is
30 compliance with the requirements of this chapter. ~~((In making its
31 determination, the board shall consider the criteria adopted by the
32 department under RCW 36.70A.190(4).))~~ The board shall find compliance
33 unless it determines that the action by the state agency, county, or
34 city is ~~((clearly erroneous))~~ arbitrary and capricious in view of the
35 entire record before the board and in light of the goals and
36 requirements of this chapter.

1 (4) In recognition of the broad range of discretion that may be
2 exercised by counties and cities consistent with the requirements of
3 this chapter, the board and any reviewing court shall not substitute
4 its judgment for that of county or city elected officials regarding the
5 exercise of such authorized discretion. When determining whether a
6 comprehensive plan, designation, development regulation, or other
7 action required by this chapter is in compliance with the requirements
8 of this chapter, the board and reviewing courts shall find compliance
9 if the city or county's plan as a whole satisfies the goals of this
10 chapter. Further, the board and reviewing courts shall defer to
11 decisions by county and city elected officials on matters not
12 specifically addressed in this chapter.

13 (5) A county or city subject to a determination of invalidity made
14 under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating that
15 the ordinance or resolution it has enacted in response to the
16 determination of invalidity will no longer substantially interfere with
17 the fulfillment of the goals of this chapter under the standard in RCW
18 36.70A.302(1).

19 (~~(+5)~~) (6) The shoreline element of a comprehensive plan and the
20 applicable development regulations adopted by a county or city shall
21 take effect as provided in chapter 90.58 RCW.

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