
HOUSE BILL 2675

State of Washington

54th Legislature

1996 Regular Session

By Representatives Hargrove and Fuhrman

Read first time 01/16/96. Referred to Committee on Government Operations.

1 AN ACT Relating to growth management hearings; amending RCW
2 34.05.518, 34.12.020, 36.70A.110, 36.70A.130, 36.70A.140, 36.70A.172,
3 36.70A.210, 36.70A.280, 36.70A.290, 36.70A.300, 36.70A.310, 36.70A.320,
4 36.70A.330, 36.70A.340, 36.70A.345, 36.70C.030, 90.58.190, and
5 90.61.040; repealing RCW 36.70A.250, 36.70A.260, and 36.70A.270; and
6 providing an expiration date.

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

8 **Sec. 1.** RCW 34.05.518 and 1995 c 382 s 5 are each amended to read
9 as follows:

10 (1) The final decision of an administrative agency in an
11 adjudicative proceeding under this chapter may be directly reviewed by
12 the court of appeals either (a) upon certification by the superior
13 court pursuant to this section or (b) if the final decision is from an
14 environmental board as defined in subsection (3) of this section, upon
15 acceptance by the court of appeals after a certificate of appealability
16 has been filed by the environmental board that rendered the final
17 decision.

18 (2) For direct review upon certification by the superior court, an
19 application for direct review must be filed with the superior court

1 within thirty days of the filing of the petition for review in superior
2 court. The superior court may certify a case for direct review only if
3 the judicial review is limited to the record of the agency proceeding
4 and the court finds that:

5 (a) Fundamental and urgent issues affecting the future
6 administrative process or the public interest are involved which
7 require a prompt determination;

8 (b) Delay in obtaining a final and prompt determination of such
9 issues would be detrimental to any party or the public interest;

10 (c) An appeal to the court of appeals would be likely regardless of
11 the determination in superior court; and

12 (d) The appellate court's determination in the proceeding would
13 have significant precedential value.

14 Procedures for certification shall be established by court rule.

15 (3)(a) For the purposes of direct review of final decisions of
16 environmental boards, environmental boards include those boards
17 identified in RCW 43.21B.005 (~~and growth management hearings boards as~~
18 ~~identified in RCW 36.70A.250~~)).

19 (b) An environmental board may issue a certificate of appealability
20 if it finds that delay in obtaining a final and prompt determination of
21 the issues would be detrimental to any party or the public interest and
22 either:

23 (i) Fundamental and urgent state-wide or regional issues are
24 raised; or

25 (ii) The proceeding is likely to have significant precedential
26 value.

27 (4) The environmental board shall state in the certificate of
28 appealability which criteria it applied, explain how that criteria was
29 met, and file with the certificate a copy of the final decision.

30 (5) For an appellate court to accept direct review of a final
31 decision of an environmental board, it shall consider the same criteria
32 outlined in subsection (3) of this section.

33 (6) The procedures for direct review of final decisions of
34 environmental boards include:

35 (a) Within thirty days after filing the petition for review with
36 the superior court, a party may file an application for direct review
37 with the superior court and serve the appropriate environmental board
38 and all parties of record. The application shall request the
39 environmental board to file a certificate of appealability.

1 (b) If an issue on review is the jurisdiction of the environmental
2 board, the board may file an application for direct review on that
3 issue.

4 (c) The environmental board shall have thirty days to grant or deny
5 the request for a certificate of appealability and its decision shall
6 be filed with the superior court and served on all parties of record.

7 (d) If a certificate of appealability is issued, the parties shall
8 have fifteen days from the date of service to file a notice of
9 discretionary review in the superior court, and the notice shall
10 include a copy of the certificate of appealability and a copy of the
11 final decision.

12 (e) If the appellate court accepts review, the certificate of
13 appealability shall be transmitted to the court of appeals as part of
14 the certified record.

15 (f) If a certificate of appealability is denied, review shall be by
16 the superior court. The superior court's decision may be appealed to
17 the court of appeals.

18 **Sec. 2.** RCW 34.12.020 and 1995 c 331 s 1 are each amended to read
19 as follows:

20 Unless the context clearly requires otherwise, the definitions in
21 this section apply throughout this chapter.

22 (1) "Office" means the office of administrative hearings.

23 (2) "Administrative law judge" means any person appointed by the
24 chief administrative law judge to conduct or preside over hearings as
25 provided in this chapter.

26 (3) "Hearing" means an adjudicative proceeding within the meaning
27 of RCW 34.05.010(1) conducted by a state agency under RCW 34.05.413
28 through 34.05.476.

29 (4) "State agency" means any state board, commission, department,
30 or officer authorized by law to make rules or to conduct adjudicative
31 proceedings, except those in the legislative or judicial branches,
32 (~~the growth management hearings boards,~~) the utilities and
33 transportation commission, the pollution control hearings board, the
34 shorelines hearings board, the forest practices appeals board, the
35 environmental hearings office, the board of industrial insurance
36 appeals, the Washington personnel resources board, the public
37 employment relations commission, the personnel appeals board, and the
38 board of tax appeals.

1 **Sec. 3.** RCW 36.70A.110 and 1995 c 400 s 2 are each amended to read
2 as follows:

3 (1) Each county that is required or chooses to plan under RCW
4 36.70A.040 shall designate an urban growth area or areas within which
5 urban growth shall be encouraged and outside of which growth can occur
6 only if it is not urban in nature. Each city that is located in such
7 a county shall be included within an urban growth area. An urban
8 growth area may include more than a single city. An urban growth area
9 may include territory that is located outside of a city only if such
10 territory already is characterized by urban growth whether or not the
11 urban growth area includes a city, or is adjacent to territory already
12 characterized by urban growth, or is a designated new fully contained
13 community as defined by RCW 36.70A.350.

14 (2) Based upon the growth management population projection made for
15 the county by the office of financial management, the urban growth
16 areas in the county shall include areas and densities sufficient to
17 permit the urban growth that is projected to occur in the county for
18 the succeeding twenty-year period. Each urban growth area shall permit
19 urban densities and shall include greenbelt and open space areas. An
20 urban growth area determination may include a reasonable land market
21 supply factor and shall permit a range of urban densities and uses. In
22 determining this market factor, cities and counties may consider local
23 circumstances. Cities and counties have discretion in their
24 comprehensive plans to make many choices about accommodating growth.

25 Within one year of July 1, 1990, each county that as of June 1,
26 1991, was required or chose to plan under RCW 36.70A.040, shall begin
27 consulting with each city located within its boundaries and each city
28 shall propose the location of an urban growth area. Within sixty days
29 of the date the county legislative authority of a county adopts its
30 resolution of intention or of certification by the office of financial
31 management, all other counties that are required or choose to plan
32 under RCW 36.70A.040 shall begin this consultation with each city
33 located within its boundaries. The county shall attempt to reach
34 agreement with each city on the location of an urban growth area within
35 which the city is located. If such an agreement is not reached with
36 each city located within the urban growth area, the county shall
37 justify in writing why it so designated the area an urban growth area.
38 A city may object formally with the department over the designation of
39 the urban growth area within which it is located. Where appropriate,

1 the department shall attempt to resolve the conflicts, including the
2 use of mediation services.

3 (3) Urban growth should be located first in areas already
4 characterized by urban growth that have adequate existing public
5 facility and service capacities to serve such development, second in
6 areas already characterized by urban growth that will be served
7 adequately by a combination of both existing public facilities and
8 services and any additional needed public facilities and services that
9 are provided by either public or private sources, and third in the
10 remaining portions of the urban growth areas. Urban growth may also be
11 located in designated new fully contained communities as defined by RCW
12 36.70A.350.

13 (4) In general, cities are the units of local government most
14 appropriate to provide urban governmental services. In general, it is
15 not appropriate that urban governmental services be extended to or
16 expanded in rural areas except in those limited circumstances shown to
17 be necessary to protect basic public health and safety and the
18 environment and when such services are financially supportable at rural
19 densities and do not permit urban development.

20 (5) On or before October 1, 1993, each county that was initially
21 required to plan under RCW 36.70A.040(1) shall adopt development
22 regulations designating interim urban growth areas under this chapter.
23 Within three years and three months of the date the county legislative
24 authority of a county adopts its resolution of intention or of
25 certification by the office of financial management, all other counties
26 that are required or choose to plan under RCW 36.70A.040 shall adopt
27 development regulations designating interim urban growth areas under
28 this chapter. Adoption of the interim urban growth areas may only
29 occur after public notice; public hearing; and compliance with the
30 state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110.
31 Such action may be appealed to (~~the appropriate growth management~~
32 ~~hearings board under RCW 36.70A.280~~) the superior court for the county
33 in which the area is located. Final urban growth areas shall be
34 adopted at the time of comprehensive plan adoption under this chapter.

35 (6) Each county shall include designations of urban growth areas in
36 its comprehensive plan.

37 **Sec. 4.** RCW 36.70A.130 and 1995 c 347 s 106 are each amended to
38 read as follows:

1 (1) Each comprehensive land use plan and development regulations
2 shall be subject to continuing evaluation and review by the county or
3 city that adopted them.

4 Any amendment or revision to a comprehensive land use plan shall
5 conform to this chapter, and any change to development regulations
6 shall be consistent with and implement the comprehensive plan.

7 (2)(a) Each county and city shall establish and broadly disseminate
8 to the public a public participation program identifying procedures
9 whereby proposed amendments or revisions of the comprehensive plan are
10 considered by the governing body of the county or city no more
11 frequently than once every year except that amendments may be
12 considered more frequently under the following circumstances:

13 (i) The initial adoption of a subarea plan; and

14 (ii) The adoption or amendment of a shoreline master program under
15 the procedures set forth in chapter 90.58 RCW.

16 (b) All proposals shall be considered by the governing body
17 concurrently so the cumulative effect of the various proposals can be
18 ascertained. However, after appropriate public participation a county
19 or city may adopt amendments or revisions to its comprehensive plan
20 that conform with this chapter whenever an emergency exists or to
21 resolve an appeal of a comprehensive plan filed with ~~((a growth
22 management hearings board or with))~~ the court.

23 (3) Each county that designates urban growth areas under RCW
24 36.70A.110 shall review, at least every ten years, its designated urban
25 growth area or areas, and the densities permitted within both the
26 incorporated and unincorporated portions of each urban growth area. In
27 conjunction with this review by the county, each city located within an
28 urban growth area shall review the densities permitted within its
29 boundaries, and the extent to which the urban growth occurring within
30 the county has located within each city and the unincorporated portions
31 of the urban growth areas. The county comprehensive plan designating
32 urban growth areas, and the densities permitted in the urban growth
33 areas by the comprehensive plans of the county and each city located
34 within the urban growth areas, shall be revised to accommodate the
35 urban growth projected to occur in the county for the succeeding
36 twenty-year period.

37 **Sec. 5.** RCW 36.70A.140 and 1995 c 347 s 107 are each amended to
38 read as follows:

1 Each county and city that is required or chooses to plan under RCW
2 36.70A.040 shall establish and broadly disseminate to the public a
3 public participation program identifying procedures providing for early
4 and continuous public participation in the development and amendment of
5 comprehensive land use plans and development regulations implementing
6 such plans. The procedures shall provide for broad dissemination of
7 proposals and alternatives, opportunity for written comments, public
8 meetings after effective notice, provision for open discussion,
9 communication programs, information services, and consideration of and
10 response to public comments. In enacting legislation in response to
11 ~~((the board's decision pursuant to RCW 36.70A.300))~~ a court's decision
12 declaring part or all of a comprehensive plan or development regulation
13 invalid, the county or city shall provide for public participation that
14 is appropriate and effective under the circumstances presented by the
15 ~~((board's))~~ court's order. Errors in exact compliance with the
16 established program and procedures shall not render the comprehensive
17 land use plan or development regulations invalid if the spirit of the
18 program and procedures is observed.

19 **Sec. 6.** RCW 36.70A.172 and 1995 c 347 s 105 are each amended to
20 read as follows:

21 ~~((1))~~ In designating and protecting critical areas under this
22 chapter, counties and cities shall include the best available science
23 in developing policies and development regulations to protect the
24 functions and values of critical areas. In addition, counties and
25 cities shall give special consideration to conservation or protection
26 measures necessary to preserve or enhance anadromous fisheries.

27 ~~((2) If it determines that advice from scientific or other experts
28 is necessary or will be of substantial assistance in reaching its
29 decision, a growth management hearings board may retain scientific or
30 other expert advice to assist in reviewing a petition under RCW
31 36.70A.290 that involves critical areas.))~~

32 **Sec. 7.** RCW 36.70A.210 and 1994 c 249 s 28 are each amended to
33 read as follows:

34 (1) The legislature recognizes that counties are regional
35 governments within their boundaries, and cities are primary providers
36 of urban governmental services within urban growth areas. For the
37 purposes of this section, a "county-wide planning policy" is a written

1 policy statement or statements used solely for establishing a county-
2 wide framework from which county and city comprehensive plans are
3 developed and adopted pursuant to this chapter. This framework shall
4 ensure that city and county comprehensive plans are consistent as
5 required in RCW 36.70A.100. Nothing in this section shall be construed
6 to alter the land-use powers of cities.

7 (2) The legislative authority of a county that plans under RCW
8 36.70A.040 shall adopt a county-wide planning policy in cooperation
9 with the cities located in whole or in part within the county as
10 follows:

11 (a) No later than sixty calendar days from July 16, 1991, the
12 legislative authority of each county that as of June 1, 1991, was
13 required or chose to plan under RCW 36.70A.040 shall convene a meeting
14 with representatives of each city located within the county for the
15 purpose of establishing a collaborative process that will provide a
16 framework for the adoption of a county-wide planning policy. In other
17 counties that are required or choose to plan under RCW 36.70A.040, this
18 meeting shall be convened no later than sixty days after the date the
19 county adopts its resolution of intention or was certified by the
20 office of financial management.

21 (b) The process and framework for adoption of a county-wide
22 planning policy specified in (a) of this subsection shall determine the
23 manner in which the county and the cities agree to all procedures and
24 provisions including but not limited to desired planning policies,
25 deadlines, ratification of final agreements and demonstration thereof,
26 and financing, if any, of all activities associated therewith.

27 (c) If a county fails for any reason to convene a meeting with
28 representatives of cities as required in (a) of this subsection, the
29 governor may immediately impose any appropriate sanction or sanctions
30 on the county from those specified under RCW 36.70A.340.

31 (d) If there is no agreement by October 1, 1991, in a county that
32 was required or chose to plan under RCW 36.70A.040 as of June 1, 1991,
33 or if there is no agreement within one hundred twenty days of the date
34 the county adopted its resolution of intention or was certified by the
35 office of financial management in any other county that is required or
36 chooses to plan under RCW 36.70A.040, the governor shall first inquire
37 of the jurisdictions as to the reason or reasons for failure to reach
38 an agreement. If the governor deems it appropriate, the governor may
39 immediately request the assistance of the department of community,

1 trade, and economic development to mediate any disputes that preclude
2 agreement. If mediation is unsuccessful in resolving all disputes that
3 will lead to agreement, the governor may impose appropriate sanctions
4 from those specified under RCW 36.70A.340 on the county, city, or
5 cities for failure to reach an agreement as provided in this section.
6 The governor shall specify the reason or reasons for the imposition of
7 any sanction.

8 (e) No later than July 1, 1992, the legislative authority of each
9 county that was required or chose to plan under RCW 36.70A.040 as of
10 June 1, 1991, or no later than fourteen months after the date the
11 county adopted its resolution of intention or was certified by the
12 office of financial management the county legislative authority of any
13 other county that is required or chooses to plan under RCW 36.70A.040,
14 shall adopt a county-wide planning policy according to the process
15 provided under this section and that is consistent with the agreement
16 pursuant to (b) of this subsection, and after holding a public hearing
17 or hearings on the proposed county-wide planning policy.

18 (3) A county-wide planning policy shall at a minimum, address the
19 following:

20 (a) Policies to implement RCW 36.70A.110;

21 (b) Policies for promotion of contiguous and orderly development
22 and provision of urban services to such development;

23 (c) Policies for siting public capital facilities of a county-wide
24 or state-wide nature;

25 (d) Policies for county-wide transportation facilities and
26 strategies;

27 (e) Policies that consider the need for affordable housing, such as
28 housing for all economic segments of the population and parameters for
29 its distribution;

30 (f) Policies for joint county and city planning within urban growth
31 areas;

32 (g) Policies for county-wide economic development and employment;
33 and

34 (h) An analysis of the fiscal impact.

35 (4) Federal agencies and Indian tribes may participate in and
36 cooperate with the county-wide planning policy adoption process.
37 Adopted county-wide planning policies shall be adhered to by state
38 agencies.

1 (5) Failure to adopt a county-wide planning policy that meets the
2 requirements of this section may result in the imposition of a sanction
3 or sanctions on a county or city within the county, as specified in RCW
4 36.70A.340. In imposing a sanction or sanctions, the governor shall
5 specify the reasons for failure to adopt a county-wide planning policy
6 in order that any imposed sanction or sanctions are fairly and
7 equitably related to the failure to adopt a county-wide planning
8 policy.

9 (6) Cities and the governor may appeal an adopted county-wide
10 planning policy to the (~~(growth management hearings board)~~) superior
11 court for the county to which the policy applies within sixty days of
12 the adoption of the county-wide planning policy.

13 (7) Multicounty planning policies shall be adopted by two or more
14 counties, each with a population of four hundred fifty thousand or
15 more, with contiguous urban areas and may be adopted by other counties,
16 according to the process established under this section or other
17 processes agreed to among the counties and cities within the affected
18 counties throughout the multicounty region.

19 **Sec. 8.** RCW 36.70A.280 and 1995 c 347 s 108 are each amended to
20 read as follows:

21 (1) A (~~(growth management hearings board)~~) superior court shall
22 hear and determine (~~(only)~~) those petitions alleging either:

23 (a) That a state agency, county, or city planning under this
24 chapter is not in compliance with the requirements of this chapter,
25 chapter 90.58 RCW as it relates to the adoption of shoreline master
26 programs or amendments thereto, or chapter 43.21C RCW as it relates to
27 plans, development regulations, or amendments, adopted under RCW
28 36.70A.040 or chapter 90.58 RCW; or

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

32 (2) A petition may be filed only by the state, a county or city
33 that plans under this chapter, a person who has either appeared before
34 the county or city regarding the matter on which a review is being
35 requested or is certified by the governor within sixty days of filing
36 the request with the (~~(board)~~) court, or a person qualified pursuant to
37 RCW 34.05.530.

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

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

8 The rationale for any adjustment that is adopted by a ((board))
9 court must be documented and filed with the office of financial
10 management within ten working days after adoption.

11 If adjusted by a ((board)) court, a county growth management
12 planning population projection shall only be used for the planning
13 purposes set forth in this chapter and shall be known as a "((board
14 adjusted)) court-adjusted population projection". None of these
15 changes shall affect the official state and county population forecasts
16 prepared by the office of financial management, which shall continue to
17 be used for state budget and planning purposes.

18 **Sec. 9.** RCW 36.70A.290 and 1995 c 347 s 109 are each amended to
19 read as follows:

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

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

28 (a) Except as provided in (c) of this subsection, the date of
29 publication for a city shall be the date the city publishes the
30 ordinance, or summary of the ordinance, adopting the comprehensive plan
31 or development regulations, or amendment thereto, as is required to be
32 published.

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

36 Except as provided in (c) of this subsection, for purposes of this
37 section the date of publication for a county shall be the date the

1 county publishes the notice that it has adopted the comprehensive plan
2 or development regulations, or amendment thereto.

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

13 ((+3)) (2) Unless the ((board)) court dismisses the petition as
14 frivolous or finds that the person filing the petition lacks standing,
15 the ((board)) court shall, within ten days of receipt of the petition,
16 set a time for hearing the matter.

17 ((+4)) (3) The ((board)) court shall base its decision on the
18 record developed by the city, county, or the state and supplemented
19 with additional evidence if the ((board)) court determines that such
20 additional evidence would be necessary or of substantial assistance to
21 the ((board)) court in reaching its decision.

22 ((+5)) (4) The ((board,)) court shall consolidate, when
23 appropriate, all petitions involving the review of the same
24 comprehensive plan or the same development regulation or regulations.

25 **Sec. 10.** RCW 36.70A.300 and 1995 c 347 s 110 are each amended to
26 read as follows:

27 (1) The ((board)) superior court shall issue a final order within
28 one hundred eighty days of receipt of the petition for review under RCW
29 36.70A.280 or 36.70A.290, or, when multiple petitions are filed, within
30 one hundred eighty days of receipt of the last petition that is
31 consolidated. Such a final order shall be based exclusively on whether
32 or not a state agency, county, or city is in compliance with the
33 requirements of this chapter, chapter 90.58 RCW as it relates to
34 adoption or amendment of shoreline master programs, or chapter 43.21C
35 RCW as it relates to plans, development regulations, and amendments
36 thereto, adopted under RCW 36.70A.040 or chapter 90.58 RCW. In the
37 final order, the ((board)) court shall either: (a) Find that the state
38 agency, county, or city is in compliance with the requirements of this

1 chapter or chapter 90.58 RCW as it relates to the adoption or amendment
2 of shoreline master programs; or (b) find that the state agency,
3 county, or city is not in compliance with the requirements of this
4 chapter or chapter 90.58 RCW as it relates to the adoption or amendment
5 of shoreline master programs, in which case the ((board)) court shall
6 remand the matter to the affected state agency, county, or city and
7 specify a reasonable time not in excess of one hundred eighty days
8 within which the state agency, county, or city shall comply with the
9 requirements of this chapter.

10 (2) A finding of noncompliance and an order of remand shall not
11 affect the validity of comprehensive plans and development regulations
12 during the period of remand, unless the ((board's)) court's final order
13 also:

14 (a) Includes a determination, supported by findings of fact and
15 conclusions of law, that the continued validity of the plan or
16 regulation would substantially interfere with the fulfillment of the
17 goals of this chapter; and

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

21 (3) A determination of invalidity shall:

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

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

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

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. 11.** RCW 36.70A.310 and 1994 c 249 s 32 are each amended to
2 read as follows:

3 A request for review by the state to a (~~growth management hearings~~
4 ~~board~~) superior court may be made only by the governor, or with the
5 governor's consent the head of an agency, or by the commissioner of
6 public lands as relating to state trust lands, for the review of
7 whether: (1) A county or city that is required or chooses to plan
8 under RCW 36.70A.040 has failed to adopt a comprehensive plan or
9 development regulations, or county-wide planning policies within the
10 time limits established by this chapter; or (2) a county or city that
11 is required or chooses to plan under this chapter has adopted a
12 comprehensive plan, development regulations, or county-wide planning
13 policies, that are not in compliance with the requirements of this
14 chapter.

15 **Sec. 12.** RCW 36.70A.320 and 1995 c 347 s 111 are each amended to
16 read as follows:

17 (1) Except as provided in subsection (2) of this section,
18 comprehensive plans and development regulations, and amendments
19 thereto, adopted under this chapter are presumed valid upon adoption.
20 In any petition under this chapter, the (~~board~~) superior court, after
21 full consideration of the petition, shall determine whether there is
22 compliance with the requirements of this chapter. In making its
23 determination, the (~~board~~) court shall consider the criteria adopted
24 by the department under RCW 36.70A.190(4). The (~~board~~) court shall
25 find compliance unless it finds by a preponderance of the evidence that
26 the state agency, county, or city erroneously interpreted or applied
27 this chapter.

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

31 **Sec. 13.** RCW 36.70A.330 and 1995 c 347 s 112 are each amended to
32 read as follows:

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

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

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

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

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

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

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

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

25 **Sec. 14.** RCW 36.70A.340 and 1991 sp.s. c 32 s 26 are each amended
26 to read as follows:

27 Upon receipt from the ((board)) superior court of a finding that a
28 state agency, county, or city is in noncompliance under RCW 36.70A.330,
29 or as a result of failure to meet the requirements of RCW 36.70A.210,
30 the governor may either:

31 (1) Notify and direct the director of the office of financial
32 management to revise allotments in appropriation levels;

33 (2) Notify and direct the state treasurer to withhold the portion
34 of revenues to which the county or city is entitled under one or more
35 of the following: The motor vehicle fuel tax, as provided in chapter
36 82.36 RCW; the transportation improvement account, as provided in RCW
37 47.26.084; the urban arterial trust account, as provided in RCW
38 47.26.080; the rural arterial trust account, as provided in RCW

1 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the
2 liquor profit tax, as provided in RCW 66.08.190; and the liquor excise
3 tax, as provided in RCW 82.08.170; or

4 (3) File a notice of noncompliance with the secretary of state and
5 the county or city, which shall temporarily rescind the county or
6 city's authority to collect the real estate excise tax under RCW
7 82.46.030 until the governor files a notice rescinding the notice of
8 noncompliance.

9 **Sec. 15.** RCW 36.70A.345 and 1994 c 249 s 33 are each amended to
10 read as follows:

11 The governor may impose a sanction or sanctions specified under RCW
12 36.70A.340 on: (1) A county or city that fails to designate critical
13 areas, agricultural lands, forest lands, or mineral resource lands
14 under RCW 36.70A.170 by the date such action was required to have been
15 taken; (2) a county or city that fails to adopt development regulations
16 under RCW 36.70A.060 protecting critical areas or conserving
17 agricultural lands, forest lands, or mineral resource lands by the date
18 such action was required to have been taken; (3) a county that fails to
19 designate urban growth areas under RCW 36.70A.110 by the date such
20 action was required to have been taken; and (4) a county or city that
21 fails to adopt its comprehensive plan or development regulations when
22 such actions are required to be taken.

23 Imposition of a sanction or sanctions under this section shall be
24 preceded by written findings by the governor, that either the county or
25 city is not proceeding in good faith to meet the requirements of the
26 act; or that the county or city has unreasonably delayed taking the
27 required action. The governor shall consult with and communicate his
28 or her findings to the appropriate (~~growth management hearings board~~)
29 superior court prior to imposing the sanction or sanctions. For those
30 counties or cities that are not required to plan or have not opted in,
31 the governor in imposing sanctions shall consider the size of the
32 jurisdiction relative to the requirements of this chapter and the
33 degree of technical and financial assistance provided.

34 **Sec. 16.** RCW 36.70C.030 and 1995 c 347 s 704 are each amended to
35 read as follows:

1 (1) This chapter replaces the writ of certiorari for appeal of land
2 use decisions and shall be the exclusive means of judicial review of
3 land use decisions, except that this chapter does not apply to:

4 (a) Judicial review of:

5 (i) Land use decisions made by bodies that are not part of a local
6 jurisdiction;

7 (ii) Land use decisions of a local jurisdiction that are subject to
8 review by a quasi-judicial body created by state law, such as the
9 shorelines hearings board (~~(or the growth management hearings board)~~);

10 (b) Judicial review of applications for a writ of mandamus or
11 prohibition; or

12 (c) Claims provided by any law for monetary damages or
13 compensation. If one or more claims for damages or compensation are
14 set forth in the same complaint with a land use petition brought under
15 this chapter, the claims are not subject to the procedures and
16 standards, including deadlines, provided in this chapter for review of
17 the petition. The judge who hears the land use petition may, if
18 appropriate, preside at a trial for damages or compensation.

19 (2) The superior court civil rules govern procedural matters under
20 this chapter to the extent that the rules are consistent with this
21 chapter.

22 **Sec. 17.** RCW 90.58.190 and 1995 c 347 s 311 are each amended to
23 read as follows:

24 (1) The appeal of the department's decision to adopt a master
25 program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(4) is
26 governed by RCW 34.05.510 through 34.05.598.

27 (2)(a) The department's decision to approve, reject, or modify a
28 proposed master program or amendment adopted by a local government
29 planning under RCW 36.70A.040 shall be appealed to the (~~growth~~
30 ~~management hearings board~~) superior court with jurisdiction over the
31 local government. The appeal shall be initiated by filing a petition
32 as provided in RCW (~~36.70A.250~~) 36.70A.280 through 36.70A.320.

33 (b) If the appeal to the (~~growth management hearings board~~)
34 superior court concerns shorelines, the (~~growth management hearings~~
35 ~~board~~) court shall review the proposed master program or amendment for
36 compliance with the requirements of this chapter and chapter 36.70A
37 RCW, the policy of RCW 90.58.020 and the applicable guidelines, and

1 chapter 43.21C RCW as it relates to the adoption of master programs and
2 amendments under chapter 90.58 RCW.

3 (c) If the appeal to the (~~(growth management hearings board)~~)
4 superior court concerns a shoreline of state-wide significance, the
5 (~~board~~) court shall uphold the decision by the department unless the
6 (~~board~~) court, by clear and convincing evidence, determines that the
7 decision of the department is inconsistent with the policy of RCW
8 90.58.020 and the applicable guidelines.

9 (d) The appellant has the burden of proof in all appeals to the
10 (~~(growth management hearings board)~~) superior court under this
11 subsection.

12 (~~((e) Any party aggrieved by a final decision of a growth
13 management hearings board under this subsection may appeal the decision
14 to superior court as provided in RCW 36.70A.300.))~~)

15 (3)(a) The department's decision to approve, reject, or modify a
16 proposed master program or master program amendment by a local
17 government not planning under RCW 36.70A.040 shall be appealed to the
18 shorelines hearings board by filing a petition within thirty days of
19 the date of the department's written notice to the local government of
20 the department's decision to approve, reject, or modify a proposed
21 master program or master program amendment as provided in RCW
22 90.58.090(2).

23 (b) In an appeal relating to shorelines, the shorelines hearings
24 board shall review the proposed master program or master program
25 amendment and, after full consideration of the presentations of the
26 local government and the department, shall determine the validity of
27 the local government's master program or amendment in light of the
28 policy of RCW 90.58.020 and the applicable guidelines.

29 (c) In an appeal relating to shorelines of state-wide significance,
30 the shorelines hearings board shall uphold the decision by the
31 department unless the board determines, by clear and convincing
32 evidence that the decision of the department is inconsistent with the
33 policy of RCW 90.58.020 and the applicable guidelines.

34 (d) Review by the shorelines hearings board shall be considered an
35 adjudicative proceeding under chapter 34.05 RCW, the Administrative
36 Procedure Act. The aggrieved local government shall have the burden of
37 proof in all such reviews.

38 (e) Whenever possible, the review by the shorelines hearings board
39 shall be heard within the county where the land subject to the proposed

1 master program or master program amendment is primarily located. The
2 department and any local government aggrieved by a final decision of
3 the hearings board may appeal the decision to superior court as
4 provided in chapter 34.05 RCW.

5 (4) A master program amendment shall become effective after the
6 approval of the department or after the decision of the shorelines
7 hearings board to uphold the master program or master program
8 amendment, provided that the board may remand the master program or
9 master program adjustment to the local government or the department for
10 modification prior to the final adoption of the master program or
11 master program amendment.

12 **Sec. 18.** RCW 90.61.040 and 1995 c 347 s 804 are each amended to
13 read as follows:

14 The commission shall:

15 (1) Consider the effectiveness of state and local government
16 efforts to consolidate and integrate the growth management act, the
17 state environmental policy act, the shoreline management act, and other
18 land use, planning, environmental, and permitting laws.

19 (2) Identify the revisions and modifications needed in state land
20 use, planning, and environmental law and practice to adequately plan
21 for growth and achieve economically and environmentally sustainable
22 development, to adequately assess environmental impacts of
23 comprehensive plans, development regulations, and growth, and to reduce
24 the time and cost of obtaining project permits.

25 (3) Draft a consolidated land use procedure, following these
26 guidelines:

27 (a) Conduct land use planning through the comprehensive planning
28 process under chapter 36.70A RCW rather than through review of
29 individual projects;

30 (b) Involve diverse sectors of the public in the planning process.
31 Early and informal environmental analysis should be incorporated into
32 planning and decision making;

33 (c) Recognize that different questions need to be answered and
34 different levels of detail applied at each planning phase, from the
35 initial development of plan concepts or plan elements to implementation
36 programs;

37 (d) Integrate and combine to the fullest extent possible the
38 processes, analysis, and documents currently required under chapters

1 36.70A and 43.21C RCW, so that subsequent plan decisions and subsequent
2 implementation will incorporate measures to promote the environmental,
3 economic, and other goals and to mitigate undesirable or unintended
4 adverse impacts on a community's quality of life;

5 (e) Focus environmental review and the level of detail needed for
6 different stages of plan and project decisions on the environmental
7 considerations most relevant to that stage of the process;

8 (f) Avoid duplicating review that has occurred for plan decisions
9 when specific projects are proposed;

10 (g) Use environmental review on projects to: (i) Review and
11 document consistency with comprehensive plans and development
12 regulations; (ii) provide prompt and coordinated review by agencies,
13 tribes, and the public on compliance with applicable environmental laws
14 and plans, including mitigation for site specific project impacts that
15 have not been considered and addressed at the plan or development
16 regulation level; and (iii) ensure accountability by local government
17 to applicants and the public for requiring and implementing mitigation
18 measures;

19 (h) Maintain or improve the quality of environmental analysis both
20 for plan and for project decisions, while integrating these analyses
21 with improved state and local planning and permitting processes;

22 (i) Examine existing land use and environmental permits for
23 necessity and utility. To the extent possible, existing permits should
24 be combined into fewer permits, assuring that the values and principles
25 intended to be protected by those permits remain protected; and

26 (j) Consolidate local government appeal processes to allow a single
27 appeal of permits at local government levels, a single state level
28 administrative appeal, and a final judicial appeal.

29 (4) Monitor instances state-wide of the vesting of project permit
30 applications during the period that an appeal is pending before a
31 (~~growth management hearings board~~) superior court, as authorized
32 under RCW 36.70A.300. The commission shall also review the extent to
33 which such vesting results in the approval of projects that are
34 inconsistent with a comprehensive plan or development regulation
35 provision ultimately found to be in compliance with a (~~board's~~)
36 court's order or remand. The commission shall analyze the impact of
37 such approvals on ensuring the attainment of the goals and policies of
38 chapter 36.70A RCW, and make recommendations to the governor and the
39 legislature on statutory changes to address any adverse impacts from

1 the provisions of RCW 36.70A.300. The commission shall provide an
2 initial report on its findings and recommendations by November 1, 1995,
3 and submit its further findings and recommendations subsequently in the
4 reports required under RCW 90.61.030.

5 (5) Monitor local government consolidated permit procedures and the
6 effectiveness of the timelines established by RCW 36.70B.090. The
7 commission shall include in its report submitted to the governor and
8 the legislature on November 1, 1997, its recommendation about what
9 timelines, if any, should be imposed on the local government
10 consolidated permit process required by chapter 36.70B RCW.

11 (6) Evaluate funding mechanisms that will enable local governments
12 to pay for and recover the costs of conducting integrated planning and
13 environmental analysis. The commission shall include its conclusions
14 in its first report to the legislature on November 1, 1995, and include
15 any recommended statutory changes.

16 (7) Study, in cooperation with the state board for registration of
17 professional engineers and the state building code council, ways in
18 which state agencies and local governments could authorize
19 professionals with appropriate qualifications to certify a project's
20 compliance with certain state and local land use and environmental
21 requirements. The commission shall report to the legislature on
22 measures necessary to implement such a system of professional
23 certification.

24 These guidelines are intended to guide the work of the commission,
25 without limiting its charge to integrate and consolidate Washington's
26 land use and environmental laws into a single, manageable statutory
27 framework.

28 NEW SECTION. **Sec. 19.** Section 18 of this act shall expire June
29 30, 1998.

30 NEW SECTION. **Sec. 20.** The following acts or parts of acts are
31 each repealed:

- 32 (1) RCW 36.70A.250 and 1994 c 249 s 29 & 1991 sp.s. c 32 s 5;
33 (2) RCW 36.70A.260 and 1994 c 249 s 30 & 1991 sp.s. c 32 s 6; and
34 (3) RCW 36.70A.270 and 1994 c 257 s 1 & 1991 sp.s. c 32 s 7.

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