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HOUSE BILL 2911

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State of Washington

55th Legislature

1998 Regular Session

By Representatives Reams, Cairnes and Thompson

Read first time 01/22/98. Referred to Committee on House Government Reform & Land Use.

1 AN ACT Relating to substantive authority and imposition of  
2 mitigation measures under the state environmental policy act; amending  
3 RCW 43.21C.065, 43.21C.240, and 36.70B.030; adding a new section to  
4 chapter 43.21C RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes that the growth  
7 management act is the fundamental building block of regulatory reform.  
8 The state and local governments have invested considerable resources in  
9 the growth management act which, together with chapters 36.70B and  
10 36.70C RCW, should serve as the integrating framework for all other  
11 land-use related laws.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.21C RCW  
13 to read as follows:

14 Any condition imposed pursuant to RCW 43.21C.060 to mitigate  
15 impacts on the environment within the jurisdiction of a local  
16 government planning under RCW 36.70A.040 must be based on a regulation,  
17 plan, or code adopted by that local government pursuant to chapter  
18 36.70A RCW and in effect on the date a complete application is filed,

1 or, if adopted by the local government prior to the enactment of  
2 chapter 36.70A RCW, determined by the local government to satisfy the  
3 requirements of chapter 36.70A RCW and in effect on the date a complete  
4 application is filed.

5 **Sec. 3.** RCW 43.21C.065 and 1992 c 219 s 1 are each amended to read  
6 as follows:

7 RCW 82.02.050 through 82.02.090 authorize local governments to  
8 require the payment of an impact fee for system improvements. RCW  
9 82.02.050 through 82.02.090 provide the exclusive basis for requiring  
10 mitigation for system improvements. A person ((required to pay an  
11 impact fee for system improvements pursuant to RCW 82.02.050 through  
12 82.02.090)) shall not be required to prepare an environmental impact  
13 statement or to pay a fee pursuant to RCW 43.21C.060 for ((those same))  
14 system improvements for which an impact fee could be imposed pursuant  
15 to RCW 82.02.050 through 82.02.090.

16 **Sec. 4.** RCW 43.21C.240 and 1995 c 347 s 202 are each amended to  
17 read as follows:

18 (1) ~~((If the requirements of subsection (2) of this section are~~  
19 ~~satisfied, a county, city, or town reviewing a project action may~~  
20 ~~determine that)) For local governments planning under chapter 36.70A~~  
21 RCW, the requirements for environmental analysis, protection, and  
22 mitigation measures in the county, city, or town's development  
23 regulations and comprehensive plans adopted under chapter 36.70A RCW((  
24 and in other applicable local, state, or federal laws and rules))  
25 provide adequate analysis of and mitigation for the specific adverse  
26 environmental impacts of the project action to which the requirements  
27 apply.

28 (2) A county, city, or town not planning under chapter 36.70A RCW  
29 may make the determination ((provided for in subsection (1) of this  
30 section)) that its development regulations, comprehensive plan, or  
31 subarea plans, or other applicable local, state, or federal laws and  
32 rules provide adequate analysis of and mitigation for the specific  
33 adverse environmental impacts of the project action to which the  
34 requirements apply if:

35 (a) In the course of project review, including any required  
36 environmental analysis, the local government considers the specific  
37 probable adverse environmental impacts of the proposed action and

1 determines that these specific impacts are adequately addressed by the  
2 development regulations or other applicable requirements of the  
3 comprehensive plan, subarea plan element of the comprehensive plan, or  
4 other local, state, or federal rules or laws; and

5 (b) The local government bases or conditions its approval on  
6 compliance with these requirements or mitigation measures.

7 (3) If a county, city, or town's comprehensive plans, subarea  
8 plans, and development regulations adequately address a project's  
9 probable specific adverse environmental impacts, as determined under  
10 subsections (1) and (2) of this section, the county, city, or town  
11 shall not impose additional mitigation under this chapter during  
12 project review. Project review shall be integrated with environmental  
13 analysis under this chapter.

14 ~~(4) ((A comprehensive plan, subarea plan, or development regulation  
15 shall be considered to adequately address an impact if the county,  
16 city, or town, through the planning and environmental review process  
17 under chapter 36.70A RCW and this chapter, has identified the specific  
18 adverse environmental impacts and:~~

19 ~~(a) The impacts have been avoided or otherwise mitigated; or~~

20 ~~(b) The legislative body of the county, city, or town has  
21 designated as acceptable certain levels of service, land use  
22 designations, development standards, or other land use planning  
23 required or allowed by chapter 36.70A RCW.~~

24 ~~(5))~~ In deciding whether a specific adverse environmental impact  
25 has been addressed by an existing rule or law of another agency with  
26 jurisdiction with environmental expertise with regard to a specific  
27 environmental impact, the county, city, or town shall consult orally or  
28 in writing with that agency and may expressly defer to that agency. In  
29 making this deferral, the county, city, or town shall base or condition  
30 its project approval on compliance with these other existing rules or  
31 laws.

32 ~~((6))~~ (5) Nothing in this section limits the authority of an  
33 agency in its review or mitigation of a project to adopt or otherwise  
34 rely on environmental analyses and requirements under other laws, as  
35 provided by this chapter.

36 ~~((7) This section shall apply only to a county, city, or town  
37 planning under RCW 36.70A.040.)~~

1       **Sec. 5.** RCW 36.70B.030 and 1995 c 347 s 404 are each amended to  
2 read as follows:

3       (1) Fundamental land use planning choices made in adopted  
4 comprehensive plans and development regulations shall serve as the  
5 foundation for project review. The review of a proposed project's  
6 consistency with applicable development regulations, or in the absence  
7 of applicable regulations the adopted comprehensive plan, under RCW  
8 36.70B.040 shall incorporate the determinations under this section.

9       (2) During project review, a local government or any subsequent  
10 reviewing body shall determine whether the items listed in this  
11 subsection are defined in the development regulations applicable to the  
12 proposed project or, in the absence of applicable regulations the  
13 adopted comprehensive plan. At a minimum, such applicable regulations  
14 or plans shall be determinative of the:

15       (a) Type of land use permitted at the site, including uses that may  
16 be allowed under certain circumstances, such as planned unit  
17 developments and conditional and special uses, if the criteria for  
18 their approval have been satisfied;

19       (b) Density of residential development in urban growth areas;  
20 ~~((and))~~

21       (c) Availability and adequacy of public facilities identified in  
22 the comprehensive plan, if the plan or development regulations provide  
23 for funding of these facilities as required by chapter 36.70A RCW; and

24       (d) Protection of critical areas.

25       (3) During project review, the local government or any subsequent  
26 reviewing body shall not reexamine alternatives to or hear appeals on  
27 the items identified in subsection (2) of this section, except for  
28 issues of code interpretation. As part of its project review process,  
29 a local government shall provide a procedure for obtaining a code  
30 interpretation as provided in RCW 36.70B.110.

31       (4) Pursuant to RCW 43.21C.240, ~~((a local government may determine  
32 that))~~ the requirements for environmental analysis and mitigation  
33 measures in development regulations, comprehensive plans adopted  
34 pursuant to chapter 36.70A RCW, and other applicable laws provide  
35 adequate mitigation for ~~((some or all of))~~ the project's specific  
36 adverse environmental impacts to which the requirements apply.

37       ~~((Nothing in this section limits the authority of a permitting  
38 agency to approve, condition, or deny a project as provided in its  
39 development regulations adopted under chapter 36.70A RCW and in its~~

1 ~~policies adopted under RCW 43.21C.060. Project review shall be used to~~  
2 ~~identify specific project design and conditions relating to the~~  
3 ~~character of development, such as the details of site plans, curb cuts,~~  
4 ~~drainage swales, transportation demand management, the payment of~~  
5 ~~impact fees, or other measures to mitigate a proposal's probable~~  
6 ~~adverse environmental impacts, if applicable.~~

7 (6)) Subsections (1) through (4) of this section apply only to  
8 local governments planning under RCW 36.70A.040.

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