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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5239

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State of Washington

65th Legislature

2017 Regular Session

By Senate Ways & Means (originally sponsored by Senators Warnick, Takko, Ericksen, Becker, Walsh, Angel, Wilson, Schoesler, Honeyford, Pearson, Brown, and Padden)

READ FIRST TIME 02/24/17.

1 AN ACT Relating to ensuring that water is available to support  
2 development; amending RCW 19.27.097, 36.70A.070, 58.17.110, and  
3 90.03.247; and declaring an emergency.

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

5 **Sec. 1.** RCW 19.27.097 and 2015 c 225 s 17 are each amended to  
6 read as follows:

7 (1) Each applicant for a building permit of a building  
8 necessitating potable water shall provide evidence of an adequate  
9 water supply for the intended use of the building. Evidence may be in  
10 the form of a water right permit from the department of ecology, a  
11 letter from an approved water purveyor stating the ability to provide  
12 water, a water well report for a groundwater withdrawal exempt from  
13 permitting under RCW 90.44.050 and not prohibited by an applicable  
14 water resources management rule adopted by the department of ecology,  
15 or another form sufficient to verify the existence of an adequate  
16 water supply. (~~In addition to other authorities, the county or city~~  
17 ~~may impose conditions on building permits requiring connection to an~~  
18 ~~existing public water system where the existing system is willing and~~  
19 ~~able to provide safe and reliable potable water to the applicant with~~  
20 ~~reasonable economy and efficiency.)) Providing evidence of an  
21 adequate water supply under this subsection does not require~~

1 impairment review by the applicant or local permitting authority. An  
2 application for a water right shall not be sufficient proof of an  
3 adequate water supply.

4 (2) In addition to other authorities, the county or city may  
5 impose conditions on building permits requiring connection to an  
6 existing public water system where the existing system is willing and  
7 able to provide safe and reliable potable water to the applicant with  
8 reasonable economy and efficiency.

9 (3) Within counties not required or not choosing to plan pursuant  
10 to RCW 36.70A.040, the county and the state may mutually determine  
11 those areas in the county in which the requirements of subsections  
12 (1) and (2) of this section shall not apply. The departments of  
13 health and ecology shall coordinate on the implementation of this  
14 section. Should the county and the state fail to mutually determine  
15 those areas to be designated pursuant to this subsection, the county  
16 may petition the department of enterprise services to mediate or, if  
17 necessary, make the determination.

18 ~~((+3))~~ (4) Buildings that do not need potable water facilities  
19 are exempt from the provisions of this section. The department of  
20 ecology, after consultation with local governments, may adopt rules  
21 to implement this section, which may recognize differences between  
22 high-growth and low-growth counties.

23 **Sec. 2.** RCW 36.70A.070 and 2015 c 241 s 2 are each amended to  
24 read as follows:

25 The comprehensive plan of a county or city that is required or  
26 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,  
27 and descriptive text covering objectives, principles, and standards  
28 used to develop the comprehensive plan. The plan shall be an  
29 internally consistent document and all elements shall be consistent  
30 with the future land use map. A comprehensive plan shall be adopted  
31 and amended with public participation as provided in RCW 36.70A.140.  
32 Each comprehensive plan shall include a plan, scheme, or design for  
33 each of the following:

34 (1) A land use element designating the proposed general  
35 distribution and general location and extent of the uses of land,  
36 where appropriate, for agriculture, timber production, housing,  
37 commerce, industry, recreation, open spaces, general aviation  
38 airports, public utilities, public facilities, and other land uses.  
39 The land use element shall include population densities, building

1 intensities, and estimates of future population growth. The land use  
2 element shall provide for protection of the quality and quantity of  
3 groundwater used for public water supplies. In providing for the  
4 protection of the quantity of groundwater used for public water  
5 supplies under this subsection, a county or city may rely on or refer  
6 to applicable water resources management rules adopted by the  
7 department of ecology. Wherever possible, the land use element should  
8 consider utilizing urban planning approaches that promote physical  
9 activity. Where applicable, the land use element shall review  
10 drainage, flooding, and storm water run-off in the area and nearby  
11 jurisdictions and provide guidance for corrective actions to mitigate  
12 or cleanse those discharges that pollute waters of the state,  
13 including Puget Sound or waters entering Puget Sound.

14 (2) A housing element ensuring the vitality and character of  
15 established residential neighborhoods that: (a) Includes an inventory  
16 and analysis of existing and projected housing needs that identifies  
17 the number of housing units necessary to manage projected growth; (b)  
18 includes a statement of goals, policies, objectives, and mandatory  
19 provisions for the preservation, improvement, and development of  
20 housing, including single-family residences; (c) identifies  
21 sufficient land for housing, including, but not limited to,  
22 government-assisted housing, housing for low-income families,  
23 manufactured housing, multifamily housing, and group homes and foster  
24 care facilities; and (d) makes adequate provisions for existing and  
25 projected needs of all economic segments of the community.

26 (3) A capital facilities plan element consisting of: (a) An  
27 inventory of existing capital facilities owned by public entities,  
28 showing the locations and capacities of the capital facilities; (b) a  
29 forecast of the future needs for such capital facilities; (c) the  
30 proposed locations and capacities of expanded or new capital  
31 facilities; (d) at least a six-year plan that will finance such  
32 capital facilities within projected funding capacities and clearly  
33 identifies sources of public money for such purposes; and (e) a  
34 requirement to reassess the land use element if probable funding  
35 falls short of meeting existing needs and to ensure that the land use  
36 element, capital facilities plan element, and financing plan within  
37 the capital facilities plan element are coordinated and consistent.  
38 Park and recreation facilities shall be included in the capital  
39 facilities plan element.

1 (4) A utilities element consisting of the general location,  
2 proposed location, and capacity of all existing and proposed  
3 utilities, including, but not limited to, electrical lines,  
4 telecommunication lines, and natural gas lines.

5 (5) Rural element. Counties shall include a rural element  
6 including lands that are not designated for urban growth,  
7 agriculture, forest, or mineral resources. The following provisions  
8 shall apply to the rural element:

9 (a) Growth management act goals and local circumstances. Because  
10 circumstances vary from county to county, in establishing patterns of  
11 rural densities and uses, a county may consider local circumstances,  
12 but shall develop a written record explaining how the rural element  
13 harmonizes the planning goals in RCW 36.70A.020 and meets the  
14 requirements of this chapter.

15 (b) Rural development. The rural element shall permit rural  
16 development, forestry, and agriculture in rural areas. The rural  
17 element shall provide for a variety of rural densities, uses,  
18 essential public facilities, and rural governmental services needed  
19 to serve the permitted densities and uses. To achieve a variety of  
20 rural densities and uses, counties may provide for clustering,  
21 density transfer, design guidelines, conservation easements, and  
22 other innovative techniques that will accommodate appropriate rural  
23 densities and uses that are not characterized by urban growth and  
24 that are consistent with rural character.

25 (c) Measures governing rural development. The rural element shall  
26 include measures that apply to rural development and protect the  
27 rural character of the area, as established by the county, by:

28 (i) Containing or otherwise controlling rural development;

29 (ii) Assuring visual compatibility of rural development with the  
30 surrounding rural area;

31 (iii) Reducing the inappropriate conversion of undeveloped land  
32 into sprawling, low-density development in the rural area;

33 (iv) Protecting critical areas, as provided in RCW 36.70A.060,  
34 and surface water and groundwater resources, which may include  
35 measures that rely on or refer to applicable water resources  
36 management rules adopted by the department of ecology; and

37 (v) Protecting against conflicts with the use of agricultural,  
38 forest, and mineral resource lands designated under RCW 36.70A.170.

39 (d) Limited areas of more intensive rural development. Subject to  
40 the requirements of this subsection and except as otherwise

1 specifically provided in this subsection (5)(d), the rural element  
2 may allow for limited areas of more intensive rural development,  
3 including necessary public facilities and public services to serve  
4 the limited area as follows:

5 (i) Rural development consisting of the infill, development, or  
6 redevelopment of existing commercial, industrial, residential, or  
7 mixed-use areas, whether characterized as shoreline development,  
8 villages, hamlets, rural activity centers, or crossroads  
9 developments.

10 (A) A commercial, industrial, residential, shoreline, or mixed-  
11 use area are subject to the requirements of (d)(iv) of this  
12 subsection, but are not subject to the requirements of (c)(ii) and  
13 (iii) of this subsection.

14 (B) Any development or redevelopment other than an industrial  
15 area or an industrial use within a mixed-use area or an industrial  
16 area under this subsection (5)(d)(i) must be principally designed to  
17 serve the existing and projected rural population.

18 (C) Any development or redevelopment in terms of building size,  
19 scale, use, or intensity shall be consistent with the character of  
20 the existing areas. Development and redevelopment may include changes  
21 in use from vacant land or a previously existing use so long as the  
22 new use conforms to the requirements of this subsection (5);

23 (ii) The intensification of development on lots containing, or  
24 new development of, small-scale recreational or tourist uses,  
25 including commercial facilities to serve those recreational or  
26 tourist uses, that rely on a rural location and setting, but that do  
27 not include new residential development. A small-scale recreation or  
28 tourist use is not required to be principally designed to serve the  
29 existing and projected rural population. Public services and public  
30 facilities shall be limited to those necessary to serve the  
31 recreation or tourist use and shall be provided in a manner that does  
32 not permit low-density sprawl;

33 (iii) The intensification of development on lots containing  
34 isolated nonresidential uses or new development of isolated cottage  
35 industries and isolated small-scale businesses that are not  
36 principally designed to serve the existing and projected rural  
37 population and nonresidential uses, but do provide job opportunities  
38 for rural residents. Rural counties may allow the expansion of small-  
39 scale businesses as long as those small-scale businesses conform with  
40 the rural character of the area as defined by the local government

1 according to RCW 36.70A.030(15). Rural counties may also allow new  
2 small-scale businesses to utilize a site previously occupied by an  
3 existing business as long as the new small-scale business conforms to  
4 the rural character of the area as defined by the local government  
5 according to RCW 36.70A.030(15). Public services and public  
6 facilities shall be limited to those necessary to serve the isolated  
7 nonresidential use and shall be provided in a manner that does not  
8 permit low-density sprawl;

9 (iv) A county shall adopt measures to minimize and contain the  
10 existing areas or uses of more intensive rural development, as  
11 appropriate, authorized under this subsection. Lands included in such  
12 existing areas or uses shall not extend beyond the logical outer  
13 boundary of the existing area or use, thereby allowing a new pattern  
14 of low-density sprawl. Existing areas are those that are clearly  
15 identifiable and contained and where there is a logical boundary  
16 delineated predominately by the built environment, but that may also  
17 include undeveloped lands if limited as provided in this subsection.  
18 The county shall establish the logical outer boundary of an area of  
19 more intensive rural development. In establishing the logical outer  
20 boundary, the county shall address (A) the need to preserve the  
21 character of existing natural neighborhoods and communities, (B)  
22 physical boundaries, such as bodies of water, streets and highways,  
23 and land forms and contours, (C) the prevention of abnormally  
24 irregular boundaries, and (D) the ability to provide public  
25 facilities and public services in a manner that does not permit low-  
26 density sprawl;

27 (v) For purposes of (d) of this subsection, an existing area or  
28 existing use is one that was in existence:

29 (A) On July 1, 1990, in a county that was initially required to  
30 plan under all of the provisions of this chapter;

31 (B) On the date the county adopted a resolution under RCW  
32 36.70A.040(2), in a county that is planning under all of the  
33 provisions of this chapter under RCW 36.70A.040(2); or

34 (C) On the date the office of financial management certifies the  
35 county's population as provided in RCW 36.70A.040(5), in a county  
36 that is planning under all of the provisions of this chapter pursuant  
37 to RCW 36.70A.040(5).

38 (e) Exception. This subsection shall not be interpreted to permit  
39 in the rural area a major industrial development or a master planned

1 resort unless otherwise specifically permitted under RCW 36.70A.360  
2 and 36.70A.365.

3 (6) A transportation element that implements, and is consistent  
4 with, the land use element.

5 (a) The transportation element shall include the following  
6 subelements:

7 (i) Land use assumptions used in estimating travel;

8 (ii) Estimated traffic impacts to state-owned transportation  
9 facilities resulting from land use assumptions to assist the  
10 department of transportation in monitoring the performance of state  
11 facilities, to plan improvements for the facilities, and to assess  
12 the impact of land-use decisions on state-owned transportation  
13 facilities;

14 (iii) Facilities and services needs, including:

15 (A) An inventory of air, water, and ground transportation  
16 facilities and services, including transit alignments and general  
17 aviation airport facilities, to define existing capital facilities  
18 and travel levels as a basis for future planning. This inventory must  
19 include state-owned transportation facilities within the city or  
20 county's jurisdictional boundaries;

21 (B) Level of service standards for all locally owned arterials  
22 and transit routes to serve as a gauge to judge performance of the  
23 system. These standards should be regionally coordinated;

24 (C) For state-owned transportation facilities, level of service  
25 standards for highways, as prescribed in chapters 47.06 and 47.80  
26 RCW, to gauge the performance of the system. The purposes of  
27 reflecting level of service standards for state highways in the local  
28 comprehensive plan are to monitor the performance of the system, to  
29 evaluate improvement strategies, and to facilitate coordination  
30 between the county's or city's six-year street, road, or transit  
31 program and the office of financial management's ten-year investment  
32 program. The concurrency requirements of (b) of this subsection do  
33 not apply to transportation facilities and services of statewide  
34 significance except for counties consisting of islands whose only  
35 connection to the mainland are state highways or ferry routes. In  
36 these island counties, state highways and ferry route capacity must  
37 be a factor in meeting the concurrency requirements in (b) of this  
38 subsection;

1 (D) Specific actions and requirements for bringing into  
2 compliance locally owned transportation facilities or services that  
3 are below an established level of service standard;

4 (E) Forecasts of traffic for at least ten years based on the  
5 adopted land use plan to provide information on the location, timing,  
6 and capacity needs of future growth;

7 (F) Identification of state and local system needs to meet  
8 current and future demands. Identified needs on state-owned  
9 transportation facilities must be consistent with the statewide  
10 multimodal transportation plan required under chapter 47.06 RCW;

11 (iv) Finance, including:

12 (A) An analysis of funding capability to judge needs against  
13 probable funding resources;

14 (B) A multiyear financing plan based on the needs identified in  
15 the comprehensive plan, the appropriate parts of which shall serve as  
16 the basis for the six-year street, road, or transit program required  
17 by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW  
18 35.58.2795 for public transportation systems. The multiyear financing  
19 plan should be coordinated with the ten-year investment program  
20 developed by the office of financial management as required by RCW  
21 47.05.030;

22 (C) If probable funding falls short of meeting identified needs,  
23 a discussion of how additional funding will be raised, or how land  
24 use assumptions will be reassessed to ensure that level of service  
25 standards will be met;

26 (v) Intergovernmental coordination efforts, including an  
27 assessment of the impacts of the transportation plan and land use  
28 assumptions on the transportation systems of adjacent jurisdictions;

29 (vi) Demand-management strategies;

30 (vii) Pedestrian and bicycle component to include collaborative  
31 efforts to identify and designate planned improvements for pedestrian  
32 and bicycle facilities and corridors that address and encourage  
33 enhanced community access and promote healthy lifestyles.

34 (b) After adoption of the comprehensive plan by jurisdictions  
35 required to plan or who choose to plan under RCW 36.70A.040, local  
36 jurisdictions must adopt and enforce ordinances which prohibit  
37 development approval if the development causes the level of service  
38 on a locally owned transportation facility to decline below the  
39 standards adopted in the transportation element of the comprehensive  
40 plan, unless transportation improvements or strategies to accommodate



1 the impacts of development are made concurrent with the development.  
2 These strategies may include increased public transportation service,  
3 ride-sharing programs, demand management, and other transportation  
4 systems management strategies. For the purposes of this subsection  
5 (6), "concurrent with the development" means that improvements or  
6 strategies are in place at the time of development, or that a  
7 financial commitment is in place to complete the improvements or  
8 strategies within six years. If the collection of impact fees is  
9 delayed under RCW 82.02.050(3), the six-year period required by this  
10 subsection (6)(b) must begin after full payment of all impact fees is  
11 due to the county or city.

12 (c) The transportation element described in this subsection (6),  
13 the six-year plans required by RCW 35.77.010 for cities, RCW  
14 36.81.121 for counties, and RCW 35.58.2795 for public transportation  
15 systems, and the ten-year investment program required by RCW  
16 47.05.030 for the state, must be consistent.

17 (7) An economic development element establishing local goals,  
18 policies, objectives, and provisions for economic growth and vitality  
19 and a high quality of life. The element shall include: (a) A summary  
20 of the local economy such as population, employment, payroll,  
21 sectors, businesses, sales, and other information as appropriate; (b)  
22 a summary of the strengths and weaknesses of the local economy  
23 defined as the commercial and industrial sectors and supporting  
24 factors such as land use, transportation, utilities, education,  
25 workforce, housing, and natural/cultural resources; and (c) an  
26 identification of policies, programs, and projects to foster economic  
27 growth and development and to address future needs. A city that has  
28 chosen to be a residential community is exempt from the economic  
29 development element requirement of this subsection.

30 (8) A park and recreation element that implements, and is  
31 consistent with, the capital facilities plan element as it relates to  
32 park and recreation facilities. The element shall include: (a)  
33 Estimates of park and recreation demand for at least a ten-year  
34 period; (b) an evaluation of facilities and service needs; and (c) an  
35 evaluation of intergovernmental coordination opportunities to provide  
36 regional approaches for meeting park and recreational demand.

37 (9) It is the intent that new or amended elements required after  
38 January 1, 2002, be adopted concurrent with the scheduled update  
39 provided in RCW 36.70A.130. Requirements to incorporate any such new  
40 or amended elements shall be null and void until funds sufficient to

1 cover applicable local government costs are appropriated and  
2 distributed by the state at least two years before local government  
3 must update comprehensive plans as required in RCW 36.70A.130.

4 **Sec. 3.** RCW 58.17.110 and 1995 c 32 s 3 are each amended to read  
5 as follows:

6 (1) The city, town, or county legislative body shall inquire into  
7 the public use and interest proposed to be served by the  
8 establishment of the subdivision and dedication. It shall determine:  
9 (a) If appropriate provisions are made for, but not limited to, the  
10 public health, safety, and general welfare, for open spaces, drainage  
11 ways, streets or roads, alleys, other public ways, transit stops,  
12 potable water supplies, sanitary wastes, parks and recreation,  
13 playgrounds, schools and schoolgrounds, and shall consider all other  
14 relevant facts, including sidewalks and other planning features that  
15 assure safe walking conditions for students who only walk to and from  
16 school; and (b) whether the public interest will be served by the  
17 subdivision and dedication.

18 (2) A proposed subdivision and dedication shall not be approved  
19 unless the city, town, or county legislative body makes written  
20 findings that: (a) Appropriate provisions are made for the public  
21 health, safety, and general welfare and for such open spaces,  
22 drainage ways, streets or roads, alleys, other public ways, transit  
23 stops, potable water supplies, sanitary wastes, parks and recreation,  
24 playgrounds, schools and schoolgrounds and all other relevant facts,  
25 including sidewalks and other planning features that assure safe  
26 walking conditions for students who only walk to and from school; and  
27 (b) the public use and interest will be served by the platting of  
28 such subdivision and dedication. If it finds that the proposed  
29 subdivision and dedication make such appropriate provisions and that  
30 the public use and interest will be served, then the legislative body  
31 shall approve the proposed subdivision and dedication. Dedication of  
32 land to any public body, provision of public improvements to serve  
33 the subdivision, and/or impact fees imposed under RCW 82.02.050  
34 through 82.02.090 may be required as a condition of subdivision  
35 approval. Dedications shall be clearly shown on the final plat. No  
36 dedication, provision of public improvements, or impact fees imposed  
37 under RCW 82.02.050 through 82.02.090 shall be allowed that  
38 constitutes an unconstitutional taking of private property. The  
39 legislative body shall not as a condition to the approval of any

1 subdivision require a release from damages to be procured from other  
2 property owners.

3 (3) If the preliminary plat includes a dedication of a public  
4 park with an area of less than two acres and the donor has designated  
5 that the park be named in honor of a deceased individual of good  
6 character, the city, town, or county legislative body must adopt the  
7 designated name.

8 (4) In approving a subdivision, dedication, or short subdivision  
9 under this chapter, a city, town, or county may rely on or refer to  
10 applicable water resources management rules adopted by the department  
11 of ecology to determine if appropriate provisions have been made for  
12 potable water supplies. Such a determination does not require  
13 impairment review by the applicant, city, town, or county.

14 **Sec. 4.** RCW 90.03.247 and 2003 c 39 s 48 are each amended to  
15 read as follows:

16 (1) Whenever an application for a permit to make beneficial use  
17 of public waters is approved relating to a stream or other water body  
18 for which minimum flows or levels have been adopted and are in effect  
19 at the time of approval, the permit shall be conditioned to: (a)  
20 protect the levels or flows; or (b) mitigate impacts to fish or  
21 aquatic habitat. Mitigation need not be limited to measures that  
22 require water to be replaced and may include other or different  
23 measures designed to mitigate the impact of the use of water without  
24 requiring the replacement of water. The department may not require  
25 the water user to mitigate for impacts that do not result from the  
26 water user's use of water.

27 (2) No agency may establish minimum flows and levels or similar  
28 water flow or level restrictions for any stream or lake of the state  
29 other than the department of ecology whose authority to establish is  
30 exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and  
31 90.54.040. The provisions of other statutes, including but not  
32 limited to ((~~RCW 77.55.100~~ and)) chapter 43.21C RCW, may not be  
33 interpreted in a manner that is inconsistent with this section. In  
34 establishing such minimum flows, levels, or similar restrictions, the  
35 department shall, during all stages of development by the department  
36 of ecology of minimum flow proposals, consult with, and carefully  
37 consider the recommendations of, the department of fish and wildlife,  
38 the department of ((~~community, trade, and economic development~~))  
39 commerce, the department of agriculture, and representatives of the

1 affected Indian tribes. Nothing herein shall preclude the department  
2 of fish and wildlife, the department of (~~community, trade, and~~  
3 ~~economic development~~) commerce, or the department of agriculture  
4 from presenting its views on minimum flow needs at any public hearing  
5 or to any person or agency, and the department of fish and wildlife,  
6 the department of (~~community, trade, and economic development~~)  
7 commerce, and the department of agriculture are each empowered to  
8 participate in proceedings of the federal energy regulatory  
9 commission and other agencies to present its views on minimum flow  
10 needs.

11 NEW SECTION. **Sec. 5.** If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
16 preservation of the public peace, health, or safety, or support of  
17 the state government and its existing public institutions, and takes  
18 effect immediately.

--- END ---