

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE HOUSE BILL 2538**

61st Legislature  
2010 Regular Session

Passed by the House March 6, 2010  
Yeas 91 Nays 3

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**Speaker of the House of Representatives**

Passed by the Senate March 2, 2010  
Yeas 46 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2538** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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ENGROSSED SUBSTITUTE HOUSE BILL 2538

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AS AMENDED BY THE SENATE

Passed Legislature - 2010 Regular Session

**State of Washington**                      **61st Legislature**                      **2010 Regular Session**

**By** House Ecology & Parks (originally sponsored by Representatives Upthegrove, Taylor, Eddy, Pedersen, Clibborn, Chase, and Springer)

READ FIRST TIME 01/21/10.

1            AN ACT Relating to high-density urban development; amending RCW  
2 82.02.020; adding a new section to chapter 43.21C RCW; and creating a  
3 new section.

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

5            NEW SECTION.    **Sec. 1.** It is the intent of the legislature to  
6 encourage high-density, compact, in-fill development and redevelopment  
7 within existing urban areas in order to further existing goals of  
8 chapter 36.70A RCW, the growth management act, to promote the use of  
9 public transit and encourage further investment in transit systems, and  
10 to contribute to the reduction of greenhouse gas emissions by: (1)  
11 Encouraging local governments to adopt plans and regulations that  
12 authorize compact, high-density urban development as defined in section  
13 2 of this act; (2) providing for the funding and preparation of  
14 environmental impact statements that comprehensively examine the  
15 impacts of such development at the time that the plans and regulations  
16 are adopted; and (3) encouraging development that is consistent with  
17 such plans and regulations by precluding appeals under chapter 43.21C  
18 RCW.

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

3           (1) Cities with a population greater than five thousand, in  
4 accordance with their existing comprehensive planning and development  
5 regulation authority under chapter 36.70A RCW, and in accordance with  
6 this section, may adopt optional elements of their comprehensive plans  
7 and optional development regulations that apply within specified  
8 subareas of the cities, that are either:

9           (a) Areas designated as mixed-use or urban centers in a land use or  
10 transportation plan adopted by a regional transportation planning  
11 organization; or

12           (b) Areas within one-half mile of a major transit stop that are  
13 zoned to have an average minimum density of fifteen dwelling units or  
14 more per gross acre.

15           (2) Cities located on the east side of the Cascade mountains and  
16 located in a county with a population of two hundred thirty thousand or  
17 less, in accordance with their existing comprehensive planning and  
18 development regulation authority under chapter 36.70A RCW, and in  
19 accordance with this section, may adopt optional elements of their  
20 comprehensive plans and optional development regulations that apply  
21 within the mixed-use or urban centers. The optional elements of their  
22 comprehensive plans and optional development regulations must enhance  
23 pedestrian, bicycle, transit, or other nonvehicular transportation  
24 methods.

25           (3) A major transit stop is defined as:

26           (a) A stop on a high capacity transportation service funded or  
27 expanded under the provisions of chapter 81.104 RCW;

28           (b) Commuter rail stops;

29           (c) Stops on rail or fixed guideway systems, including transitways;

30           (d) Stops on bus rapid transit routes or routes that run on high  
31 occupancy vehicle lanes; or

32           (e) Stops for a bus or other transit mode providing fixed route  
33 service at intervals of at least thirty minutes during the peak hours  
34 of operation.

35           (4)(a) A city that elects to adopt such an optional comprehensive  
36 plan element and optional development regulations shall prepare a  
37 nonproject environmental impact statement, pursuant to RCW 43.21C.030,  
38 assessing and disclosing the probable significant adverse environmental

1 impacts of the optional comprehensive plan element and development  
2 regulations and of future development that is consistent with the plan  
3 and regulations.

4 (b) At least one community meeting must be held on the proposed  
5 subarea plan before the scoping notice for such a nonproject  
6 environmental impact statement is issued. Notice of scoping for such  
7 a nonproject environmental impact statement and notice of the community  
8 meeting required by this section must be mailed to all property owners  
9 of record within the subarea to be studied, to all property owners  
10 within one hundred fifty feet of the boundaries of such a subarea, to  
11 all affected federally recognized tribal governments whose ceded area  
12 is within one-half mile of the boundaries of the subarea, and to  
13 agencies with jurisdiction over the future development anticipated  
14 within the subarea.

15 (c) In cities with over five hundred thousand residents, notice of  
16 scoping for such a nonproject environmental impact statement and notice  
17 of the community meeting required by this section must be mailed to all  
18 small businesses as defined in RCW 19.85.020, and to all community  
19 preservation and development authorities established under chapter  
20 43.167 RCW, located within the subarea to be studied or within one  
21 hundred fifty feet of the boundaries of such subarea. The process for  
22 community involvement must have the goal of fair treatment and  
23 meaningful involvement of all people with respect to the development  
24 and implementation of the subarea planning process.

25 (d) The notice of the community meeting must include general  
26 illustrations and descriptions of buildings generally representative of  
27 the maximum building envelope that will be allowed under the proposed  
28 plan and indicate that future appeals of proposed developments that are  
29 consistent with the plan will be limited. Notice of the community  
30 meeting must include signs located on major travel routes in the  
31 subarea. If the building envelope increases during the process,  
32 another notice complying with the requirements of this section must be  
33 issued before the next public involvement opportunity.

34 (e) Any person that has standing to appeal the adoption of this  
35 subarea plan or the implementing regulations under RCW 36.70A.280 has  
36 standing to bring an appeal of the nonproject environmental impact  
37 statement required by this subsection.

1 (f) Cities with over five hundred thousand residents shall prepare  
2 a study that accompanies or is appended to the nonproject environmental  
3 impact statement, but must not be part of that statement, that analyzes  
4 the extent to which the proposed subarea plan may result in the  
5 displacement or fragmentation of existing businesses, existing  
6 residents, including people living with poverty, families with  
7 children, and intergenerational households, or cultural groups within  
8 the proposed subarea plan. The city shall also discuss the results of  
9 the analysis at the community meeting.

10 (g) As an incentive for development authorized under this section,  
11 a city shall consider establishing a transfer of development rights  
12 program in consultation with the county where the city is located, that  
13 conserves county-designated agricultural and forest land of long-term  
14 commercial significance. If the city decides not to establish a  
15 transfer of development rights program, the city must state in the  
16 record the reasons for not adopting the program. The city's decision  
17 not to establish a transfer of development rights program is not  
18 subject to appeal. Nothing in this subsection (4)(g) may be used as a  
19 basis to challenge the optional comprehensive plan or subarea plan  
20 policies authorized under this section.

21 (5)(a) Until July 1, 2018, a proposed development that is  
22 consistent with the optional comprehensive plan or subarea plan  
23 policies and development regulations adopted under subsection (1) or  
24 (2) of this section and that is environmentally reviewed under  
25 subsection (4) of this section may not be challenged in administrative  
26 or judicial appeals for noncompliance with this chapter as long as a  
27 complete application for such a development that vests the application  
28 or would later lead to vested status under city or state law is  
29 submitted to the city within a time frame established by the city, but  
30 not to exceed ten years from the date of issuance of the final  
31 environmental impact statement.

32 (b) After July 1, 2018, the immunity from appeals under this  
33 chapter of any application that vests or will vest under this  
34 subsection or the ability to vest under this subsection is still valid,  
35 provided that the final subarea environmental impact statement is  
36 issued by July 1, 2018. After July 1, 2018, a city may continue to  
37 collect reimbursement fees under subsection (6) of this section for the

1 proportionate share of a subarea environmental impact statement issued  
2 prior to July 1, 2018.

3 (6) It is recognized that a city that prepares a nonproject  
4 environmental impact statement under subsection (4) of this section  
5 must endure a substantial financial burden. A city may recover its  
6 reasonable expenses of preparation of a nonproject environmental impact  
7 statement prepared under subsection (4) of this section through access  
8 to financial assistance under RCW 36.70A.490 or funding from private  
9 sources. In addition, a city is authorized to recover a portion of its  
10 reasonable expenses of preparation of such a nonproject environmental  
11 impact statement by the assessment of reasonable and proportionate fees  
12 upon subsequent development that is consistent with the plan and  
13 development regulations adopted under subsection (5) of this section,  
14 as long as the development makes use of and benefits, as described in  
15 subsection (5) of this section, from the nonproject environmental  
16 impact statement prepared by the city. Any assessment fees collected  
17 from subsequent development may be used to reimburse funding received  
18 from private sources. In order to collect such fees, the city must  
19 enact an ordinance that sets forth objective standards for determining  
20 how the fees to be imposed upon each development will be proportionate  
21 to the impacts of each development and to the benefits accruing to each  
22 development from the nonproject environmental impact statement. Any  
23 disagreement about the reasonableness or amount of the fees imposed  
24 upon a development may not be the basis for delay in issuance of a  
25 project permit for that development. The fee assessed by the city may  
26 be paid with the written stipulation "paid under protest" and if the  
27 city provides for an administrative appeal of its decision on the  
28 project for which the fees are imposed, any dispute about the amount of  
29 the fees must be resolved in the same administrative appeal process.

30 (7) If a proposed development is inconsistent with the optional  
31 comprehensive plan or subarea plan policies and development regulations  
32 adopted under subsection (1) of this section, the city shall require  
33 additional environmental review in accordance with this chapter.

34 **Sec. 3.** RCW 82.02.020 and 2009 c 535 s 1103 are each amended to  
35 read as follows:

36 Except only as expressly provided in chapters 67.28, 81.104, and  
37 82.14 RCW, the state preempts the field of imposing retail sales and

1 use taxes and taxes upon parimutuel wagering authorized pursuant to RCW  
2 67.16.060, conveyances, and cigarettes, and no county, town, or other  
3 municipal subdivision shall have the right to impose taxes of that  
4 nature. Except as provided in RCW 64.34.440 and 82.02.050 through  
5 82.02.090, no county, city, town, or other municipal corporation shall  
6 impose any tax, fee, or charge, either direct or indirect, on the  
7 construction or reconstruction of residential buildings, commercial  
8 buildings, industrial buildings, or on any other building or building  
9 space or appurtenance thereto, or on the development, subdivision,  
10 classification, or reclassification of land. However, this section  
11 does not preclude dedications of land or easements within the proposed  
12 development or plat which the county, city, town, or other municipal  
13 corporation can demonstrate are reasonably necessary as a direct result  
14 of the proposed development or plat to which the dedication of land or  
15 easement is to apply.

16 This section does not prohibit voluntary agreements with counties,  
17 cities, towns, or other municipal corporations that allow a payment in  
18 lieu of a dedication of land or to mitigate a direct impact that has  
19 been identified as a consequence of a proposed development,  
20 subdivision, or plat. A local government shall not use such voluntary  
21 agreements for local off-site transportation improvements within the  
22 geographic boundaries of the area or areas covered by an adopted  
23 transportation program authorized by chapter 39.92 RCW. Any such  
24 voluntary agreement is subject to the following provisions:

25 (1) The payment shall be held in a reserve account and may only be  
26 expended to fund a capital improvement agreed upon by the parties to  
27 mitigate the identified, direct impact;

28 (2) The payment shall be expended in all cases within five years of  
29 collection; and

30 (3) Any payment not so expended shall be refunded with interest to  
31 be calculated from the original date the deposit was received by the  
32 county and at the same rate applied to tax refunds pursuant to RCW  
33 84.69.100; however, if the payment is not expended within five years  
34 due to delay attributable to the developer, the payment shall be  
35 refunded without interest.

36 No county, city, town, or other municipal corporation shall require  
37 any payment as part of such a voluntary agreement which the county,

1 city, town, or other municipal corporation cannot establish is  
2 reasonably necessary as a direct result of the proposed development or  
3 plat.

4 Nothing in this section prohibits cities, towns, counties, or other  
5 municipal corporations from collecting reasonable fees from an  
6 applicant for a permit or other governmental approval to cover the cost  
7 to the city, town, county, or other municipal corporation of processing  
8 applications, inspecting and reviewing plans, or preparing detailed  
9 statements required by chapter 43.21C RCW, including reasonable fees  
10 that are consistent with section 2(6) of this act.

11 This section does not limit the existing authority of any county,  
12 city, town, or other municipal corporation to impose special  
13 assessments on property specifically benefitted thereby in the manner  
14 prescribed by law.

15 Nothing in this section prohibits counties, cities, or towns from  
16 imposing or permits counties, cities, or towns to impose water, sewer,  
17 natural gas, drainage utility, and drainage system charges. However,  
18 no such charge shall exceed the proportionate share of such utility or  
19 system's capital costs which the county, city, or town can demonstrate  
20 are attributable to the property being charged. Furthermore, these  
21 provisions may not be interpreted to expand or contract any existing  
22 authority of counties, cities, or towns to impose such charges.

23 Nothing in this section prohibits a transportation benefit district  
24 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits  
25 the legislative authority of a county, city, or town from approving the  
26 imposition of such fees within a transportation benefit district.

27 Nothing in this section prohibits counties, cities, or towns from  
28 imposing transportation impact fees authorized pursuant to chapter  
29 39.92 RCW.

30 Nothing in this section prohibits counties, cities, or towns from  
31 requiring property owners to provide relocation assistance to tenants  
32 under RCW 59.18.440 and 59.18.450.

33 Nothing in this section limits the authority of counties, cities,  
34 or towns to implement programs consistent with RCW 36.70A.540, nor to  
35 enforce agreements made pursuant to such programs.

36 This section does not apply to special purpose districts formed and



1 acting pursuant to Title 54, 57, or 87 RCW, nor is the authority  
2 conferred by these titles affected.

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