S-1640.1

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**SUBSTITUTE SENATE BILL 5651**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senate Early Learning & K-12 Education (originally sponsored by Senators Conway, Becker, and Zeiger)

AN ACT Relating to the siting of schools and school facilities; amending RCW 36.70A.280 and 36.70A.280; adding new sections to chapter 36.70A RCW; providing an effective date; and providing an expiration date.

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

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

(1) A county may designate public school projects as an essential public facility within its jurisdiction, and school projects may be sited outside the urban growth area based on the criteria set forth in section 2 of this act.

(2) As an alternative to designating school projects as an essential public facility under subsection (1) of this section, a county required to or choosing to plan under RCW 36.70A.040 must establish, in consultation with affected school districts and affected cities, a process for approving school projects outside of the urban growth area based on the criteria in section 2 of this act.

(3) School projects may not be sited on agricultural lands, forest lands, or mineral resource lands.

(4) For purposes of this section and section 2 of this act and before submitting an application for a school project, a school district must prepare a written report setting forth a determination of need. The determination of need must include:

(a) An inventory of developable land within the urban growth area and relevant service area suitable for the school project, taking into consideration locally adopted educational program requirements;

(b) A review of, to the extent there is such suitable land available within the urban growth area and in the specific service area needed, current zoning, site characteristics, and the financial feasibility of using public dollars to secure such a school site; and

(c) Findings that set forth the school district's siting criteria and applying them to the question of whether it is feasible for the district to acquire such suitable land.

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

(1) By July 1, 2018, each county required to or choosing to plan under RCW 36.70A.040 must amend its process for siting schools outside the urban growth area pursuant to section 1 (1) or (2) of this act. The approval of an amendment must not be considered an amendment to the comprehensive plan for the purposes of RCW 36.70A.130(2) and may be considered at any time. Any comprehensive plan or development regulation adopted to implement a school siting under this section and section 1 of this act is not subject to the requirement for compliance with applicable multicounty planning policies and countywide planning policies.

(2) School projects may be permitted outside the urban growth area when:

(a) The school project is needed to meet student capacity needs in an identified service area that serves students residing in whole or in part outside of an urban growth area, as demonstrated by a capital facilities plan adopted by a locally elected school board of directors;

(b) New infrastructure is provided for, with the costs to the school district based on a reasonable nexus to the impacts of the school project on infrastructure needs. On-site and off-site infrastructure and service impacts on the county and the affected city are fully considered and mitigated;

(c) Cities or other public agencies, or both, are authorized to extend public facilities to the school project. Public facilities include water systems and storm and sanitary sewer systems sufficient to meet the facility needs of the school. If any public facility is extended beyond the urban growth area to serve the school project, the public facility must only be available to and serve the school project;

(d) Any utility extensions are solely dedicated to the school project and are provided for, with the costs to the school district, and any urban public facility necessary and appropriate to serve a school project outside the urban growth area are provided for, with the cost to the school district based on a reasonable nexus to the impacts of the school project;

(e) Transit-oriented site planning and traffic demand management programs required by the county in consultation with the affected city are provided by the school project;

(f) Buffers are provided on district-owned property or on property owned by other public agencies or provided through easements between the school project and adjacent nonurban uses;

(g) Environmental protection, including air and water quality, has been addressed and provided for;

(h) The school project complies with the applicable development regulations for the property;

(i) If development regulations are not in place, the county adopts development regulations during the next amendment cycle to ensure that the urban growth will not occur in adjacent nonurban areas;

(j) Provisions are made to mitigate significant adverse impacts on designated agricultural lands, forest lands, and mineral resource lands if the school is located adjacent to such lands; and

(k) The plan for the school project is consistent with the development regulations established for the protection of critical areas by the county pursuant to RCW 36.70A.170.

(3) Each county that is required to or choosing to plan under RCW 36.70A.040 and subject to this section and section 1 of this act must make a finding after the appropriate amendment process that:

(a) The comprehensive plan includes policies, consistent with this section, to permit schools to be sited outside of the urban growth area;

(b) The comprehensive plan and development regulations include restrictions that preclude new urban or suburban land uses in the vicinity of school projects, except in areas otherwise designated for urban growth under RCW 36.70A.110; and

(c) The county finds that the school project plan is consistent with the development regulations established for critical areas.

(4) The county may review the determination of need made by a school district under section 1(4) of this act, but any findings are presumed to be correct. The county may overturn the school district's determination of need only if it is clearly erroneous. In that case, the county must identify other sites that meet the district's criteria as set forth in the district's determination of need.

(5) Approval of an application for a school project must not be considered an amendment to the comprehensive plan for the purposes of RCW 36.70A.130(2) and may be considered at any time.

**Sec.**  RCW 36.70A.280 and 2014 c 147 s 3 are each amended to read as follows:

(1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance ((~~with RCW 36.70A.5801~~)) for siting a school outside an urban growth area in accordance with sections 1 and 2 of this act;

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

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction;

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous; or

(f) That a department determination under RCW 36.70A.060(1)(d) is erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

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

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

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

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

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

(6) Only the state courts have the authority to review causes of action arising from sections 1 and 2 of this act and must give substantial deference to the actions of the county in which a permit has been granted to site a school outside of the urban growth area, and to a determination of need under section 1 of this act.

**Sec.**  RCW 36.70A.280 and 2011 c 360 s 17 are each amended to read as follows:

(1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance ((~~with RCW 36.70A.5801~~)) for siting a school outside an urban growth area in accordance with sections 1 and 2 of this act;

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

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; or

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

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

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

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

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

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

(6) Only the state courts have the authority to review causes of action arising from sections 1 and 2 of this act and must give substantial deference to the actions of the county in which a permit has been granted to site a school outside of the urban growth area, and to a determination of need under section 1 of this act.

NEW SECTION. **Sec.**  Section 3 of this act expires December 31, 2020.

NEW SECTION. **Sec.**  Section 4 of this act takes effect December 31, 2020.

**--- END ---**