
SECOND SUBSTITUTE SENATE BILL 5239

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,
3 90.03.247, and 90.54.120; 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 under chapter 90.54 RCW by
15 the department of ecology, or another form sufficient to verify the
16 existence of an adequate water supply. (~~In addition to other~~
17 ~~authorities, the county or city may impose conditions on building~~
18 ~~permits requiring connection to an existing public water system where~~
19 ~~the existing system is willing and able to provide safe and reliable~~
20 ~~potable water to the applicant with reasonable economy and~~

1 ~~efficiency.~~) An application for a water right shall not be
2 sufficient proof of an adequate water supply.

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

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

17 (~~(3)~~) (4) Buildings that do not need potable water facilities
18 are exempt from the provisions of this section. The department of
19 ecology, after consultation with local governments, may adopt rules
20 to implement this section, which may recognize differences between
21 high-growth and low-growth counties.

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

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

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

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

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

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

39 (4) A utilities element consisting of the general location,
40 proposed location, and capacity of all existing and proposed

1 utilities, including, but not limited to, electrical lines,
2 telecommunication lines, and natural gas lines.

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

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

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

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

26 (i) Containing or otherwise controlling rural development;

27 (ii) Assuring visual compatibility of rural development with the
28 surrounding rural area;

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

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

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

37 (d) Limited areas of more intensive rural development. Subject to
38 the requirements of this subsection and except as otherwise
39 specifically provided in this subsection (5)(d), the rural element
40 may allow for limited areas of more intensive rural development,

1 including necessary public facilities and public services to serve
2 the limited area as follows:

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

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

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

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

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

31 (iii) The intensification of development on lots containing
32 isolated nonresidential uses or new development of isolated cottage
33 industries and isolated small-scale businesses that are not
34 principally designed to serve the existing and projected rural
35 population and nonresidential uses, but do provide job opportunities
36 for rural residents. Rural counties may allow the expansion of small-
37 scale businesses as long as those small-scale businesses conform with
38 the rural character of the area as defined by the local government
39 according to RCW 36.70A.030(15). Rural counties may also allow new
40 small-scale businesses to utilize a site previously occupied by an

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

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

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

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

29 (B) On the date the county adopted a resolution under RCW
30 36.70A.040(2), in a county that is planning under all of the
31 provisions of this chapter under RCW 36.70A.040(2); or

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

36 (e) Exception. This subsection shall not be interpreted to permit
37 in the rural area a major industrial development or a master planned
38 resort unless otherwise specifically permitted under RCW 36.70A.360
39 and 36.70A.365.

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

3 (a) The transportation element shall include the following
4 subelements:

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

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

12 (iii) Facilities and services needs, including:

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

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

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

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

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

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

8 (iv) Finance, including:

9 (A) An analysis of funding capability to judge needs against
10 probable funding resources;

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

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

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

26 (vi) Demand-management strategies;

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

31 (b) After adoption of the comprehensive plan by jurisdictions
32 required to plan or who choose to plan under RCW 36.70A.040, local
33 jurisdictions must adopt and enforce ordinances which prohibit
34 development approval if the development causes the level of service
35 on a locally owned transportation facility to decline below the
36 standards adopted in the transportation element of the comprehensive
37 plan, unless transportation improvements or strategies to accommodate
38 the impacts of development are made concurrent with the development.
39 These strategies may include increased public transportation service,
40 ride-sharing programs, demand management, and other transportation

1 systems management strategies. For the purposes of this subsection
2 (6), "concurrent with the development" means that improvements or
3 strategies are in place at the time of development, or that a
4 financial commitment is in place to complete the improvements or
5 strategies within six years. If the collection of impact fees is
6 delayed under RCW 82.02.050(3), the six-year period required by this
7 subsection (6)(b) must begin after full payment of all impact fees is
8 due to the county or city.

9 (c) The transportation element described in this subsection (6),
10 the six-year plans required by RCW 35.77.010 for cities, RCW
11 36.81.121 for counties, and RCW 35.58.2795 for public transportation
12 systems, and the ten-year investment program required by RCW
13 47.05.030 for the state, must be consistent.

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

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

34 (9) It is the intent that new or amended elements required after
35 January 1, 2002, be adopted concurrent with the scheduled update
36 provided in RCW 36.70A.130. Requirements to incorporate any such new
37 or amended elements shall be null and void until funds sufficient to
38 cover applicable local government costs are appropriated and
39 distributed by the state at least two years before local government
40 must update comprehensive plans as required in RCW 36.70A.130.

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

3 (1) The city, town, or county legislative body shall inquire into
4 the public use and interest proposed to be served by the
5 establishment of the subdivision and dedication. It shall determine:

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

15 (2) A proposed subdivision and dedication shall not be approved
16 unless the city, town, or county legislative body makes written
17 findings that: (a) Appropriate provisions are made for the public
18 health, safety, and general welfare and for such open spaces,
19 drainage ways, streets or roads, alleys, other public ways, transit
20 stops, potable water supplies, sanitary wastes, parks and recreation,
21 playgrounds, schools and schoolgrounds and all other relevant facts,
22 including sidewalks and other planning features that assure safe
23 walking conditions for students who only walk to and from school; and

24 (b) the public use and interest will be served by the platting of
25 such subdivision and dedication. If it finds that the proposed
26 subdivision and dedication make such appropriate provisions and that
27 the public use and interest will be served, then the legislative body
28 shall approve the proposed subdivision and dedication. Dedication of
29 land to any public body, provision of public improvements to serve
30 the subdivision, and/or impact fees imposed under RCW 82.02.050
31 through 82.02.090 may be required as a condition of subdivision
32 approval. Dedications shall be clearly shown on the final plat. No
33 dedication, provision of public improvements, or impact fees imposed
34 under RCW 82.02.050 through 82.02.090 shall be allowed that
35 constitutes an unconstitutional taking of private property. The
36 legislative body shall not as a condition to the approval of any
37 subdivision require a release from damages to be procured from other
38 property owners.

39 (3) If the preliminary plat includes a dedication of a public
40 park with an area of less than two acres and the donor has designated

1 that the park be named in honor of a deceased individual of good
2 character, the city, town, or county legislative body must adopt the
3 designated name.

4 (4) In approving a subdivision, dedication, or short subdivision
5 under this chapter, a city, town, or county may rely on or refer to
6 applicable water resources management rules adopted by the department
7 of ecology to determine if appropriate provisions have been made for
8 potable water supplies.

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

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

22 (2) No agency may establish minimum flows and levels or similar
23 water flow or level restrictions for any stream or lake of the state
24 other than the department of ecology whose authority to establish is
25 exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and
26 90.54.040. The provisions of other statutes, including but not
27 limited to ((RCW 77.55.100 and)) chapter 43.21C RCW, may not be
28 interpreted in a manner that is inconsistent with this section. In
29 establishing such minimum flows, levels, or similar restrictions, the
30 department shall, during all stages of development by the department
31 of ecology of minimum flow proposals, consult with, and carefully
32 consider the recommendations of, the department of fish and wildlife,
33 the department of ((community, trade, and economic development))
34 commerce, the department of agriculture, and representatives of the
35 affected Indian tribes. Nothing herein shall preclude the department
36 of fish and wildlife, the department of ((community, trade, and
37 economic development)) commerce, or the department of agriculture
38 from presenting its views on minimum flow needs at any public hearing
39 or to any person or agency, and the department of fish and wildlife,

1 the department of (~~community, trade, and economic development~~)
2 commerce, and the department of agriculture are each empowered to
3 participate in proceedings of the federal energy regulatory
4 commission and other agencies to present its views on minimum flow
5 needs.

6 **Sec. 5.** RCW 90.54.120 and 1971 ex.s. c 225 s 13 are each amended
7 to read as follows:

8 (~~For the purposes of this chapter, unless the context is clearly~~
9 ~~to the contrary, the following definitions shall be used:~~) The
10 definitions in this section apply throughout this chapter unless the
11 context clearly requires otherwise.

12 (1) "Department" means department of ecology.

13 (2) "Utilize" or "utilization" shall not only mean use of water
14 for such long recognized consumptive or nonconsumptive beneficial
15 purposes as domestic, stock watering, industrial, commercial,
16 agricultural, irrigation, hydroelectric power production, thermal
17 power production, mining, recreational, maintenance of wildlife and
18 fishlife purposes, but includes the retention of water in lakes and
19 streams for the protection of environmental, scenic, aesthetic and
20 related purposes, upon which economic values have not been placed
21 historically and are difficult to quantify.

22 (3) "Withdrawal of water" means the removal of water from any
23 source for a beneficial use.

24 NEW SECTION. **Sec. 6.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of
30 the state government and its existing public institutions, and takes
31 effect immediately.

--- END ---