

CERTIFICATION OF ENROLLMENT

SECOND SUBSTITUTE SENATE BILL 5368

Chapter 312, Laws of 2021

(partial veto)

67th Legislature
2021 Regular Session

GROWTH MANAGEMENT ACT—RURAL ECONOMIC DEVELOPMENT

EFFECTIVE DATE: July 25, 2021

Passed by the Senate April 19, 2021
Yeas 48 Nays 1

DENNY HECK

President of the Senate

Passed by the House April 11, 2021
Yeas 93 Nays 5

LAURIE JINKINS

**Speaker of the House of
Representatives**

Approved May 13, 2021 11:59 AM with
the exception of sections 4, 5, 6,
and 7, which are vetoed.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of
the Senate of the State of
Washington, do hereby certify that
the attached is **SECOND SUBSTITUTE
SENATE BILL 5368** as passed by the
Senate and the House of
Representatives on the dates hereon
set forth.

BRAD HENDRICKSON

Secretary

FILED

May 13, 2021

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 5368

AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

State of Washington 67th Legislature 2021 Regular Session

By Senate Ways & Means (originally sponsored by Senators Short, Fortunato, and Wilson, L.)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to encouraging rural economic development;
2 amending RCW 36.70A.330 and 43.155.070; adding a new section to
3 chapter 35A.14 RCW; adding a new section to chapter 36.70A RCW;
4 adding a new section to chapter 43.160 RCW; adding a new section to
5 chapter 80.36 RCW; and adding a new section to chapter 43.330 RCW.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 35A.14
8 RCW to read as follows:

9 (1) A code city as provided in RCW 35A.14.296(2) may collaborate
10 with the county or counties where the code city is located to form an
11 interlocal agreement regarding annexation of unincorporated territory
12 within the urban growth area boundary. The interlocal agreement
13 formation process must include procedures for public participation.
14 The procedures must provide for broad dissemination of proposals and
15 alternatives, opportunity for written comments, public meetings after
16 effective notice, and consideration of and response to public
17 comments. The interlocal agreement may only be executed after notice
18 of availability of the agreement is posted on the website of each
19 legislative body for four weeks and a public hearing by each
20 legislative body, separately or jointly. This method of annexation

1 shall be an alternative method and is additional to all other methods
2 provided for in this chapter.

3 (2) An interlocal agreement under this section may include use of
4 a sales tax credit for annexed areas should such a credit be
5 reinstated by the legislature.

6 (3) The agreement or plan under this section must address the
7 following:

8 (a) A balancing of annexations of commercial, industrial, and
9 residential properties so that any potential loss or gain is
10 considered and distributed fairly as determined by tax revenue;

11 (b) Development, ownership, and maintenance of infrastructure;

12 (c) The potential for revenue-sharing agreements.

13 (4) In addressing the items in subsection (3)(a) through (c) of
14 this section, the parties must also address the balancing of factors
15 and objectives for annexation review in RCW 36.93.170 and 36.93.180.

16 (5) By December 1, 2021, the association of Washington cities and
17 the Washington state association of counties shall report to the
18 legislature, in compliance with RCW 43.01.036, on how a sales tax
19 credit may be utilized to encourage appropriate annexations and what
20 limits should be associated with such a credit if reinstated.

21 **Sec. 2.** RCW 36.70A.330 and 1997 c 429 s 21 are each amended to
22 read as follows:

23 (1) After the time set for complying with the requirements of
24 this chapter under RCW 36.70A.300(3)(b) has expired, or at an earlier
25 time upon the motion of a county or city subject to a determination
26 of invalidity under RCW 36.70A.300, the board shall set a hearing for
27 the purpose of determining whether the state agency, county, or city
28 is in compliance with the requirements of this chapter.

29 (2) The board shall conduct a hearing and issue a finding of
30 compliance or noncompliance with the requirements of this chapter and
31 with any compliance schedule established by the board in its final
32 order. A person with standing to challenge the legislation enacted in
33 response to the board's final order may participate in the hearing
34 along with the petitioner and the state agency, county, or city. A
35 hearing under this subsection shall be given the highest priority of
36 business to be conducted by the board, and a finding shall be issued
37 within forty-five days of the filing of the motion under subsection
38 (1) of this section with the board. The board shall issue any order

1 necessary to make adjustments to the compliance schedule and set
2 additional hearings as provided in subsection (5) of this section.

3 (3) If the board after a compliance hearing finds that the state
4 agency, county, or city is not in compliance, the board shall
5 transmit its finding to the governor. ((The))

6 (a) The board may refer a finding of noncompliance to the
7 department. The purpose of the referral is for the department to
8 provide technical assistance to facilitate speedy resolution of the
9 finding of noncompliance and to provide training pursuant to section
10 3 of this act as necessary.

11 (b) Alternatively, the board may recommend to the governor that
12 the sanctions authorized by this chapter be imposed. The board shall
13 take into consideration the county's or city's efforts to meet its
14 compliance schedule in making the decision to recommend sanctions to
15 the governor.

16 (4) In a compliance hearing upon petition of a party, the board
17 shall also reconsider its final order and decide, if no determination
18 of invalidity has been made, whether one now should be made under RCW
19 36.70A.302.

20 (5) The board shall schedule additional hearings as appropriate
21 pursuant to subsections (1) and (2) of this section.

22 NEW SECTION. Sec. 3. A new section is added to chapter 36.70A
23 RCW to read as follows:

24 (1) The department shall offer training to assist local
25 governments in understanding findings of noncompliance from the
26 growth management hearings board pursuant to RCW 36.70A.300 and
27 36.70A.330 and applying prior decisions of the board to ongoing
28 planning efforts to avoid findings of noncompliance.

29 (2) The department may award grants to a public agency with
30 appropriate expertise and funded by local governments to provide the
31 training required in subsection (1) of this section.

32 (3) The training provided in subsection (1) of this section is
33 limited to counties that are largely rural.

34 ***Sec. 4. RCW 43.155.070 and 2017 3rd sp.s. c 10 s 9 are each**
35 **amended to read as follows:**

36 **(1) To qualify for financial assistance under this chapter the**
37 **board must determine that a local government meets all of the**
38 **following conditions:**

1 (a) The city or county must be imposing a tax under chapter 82.46
2 RCW at a rate of at least one-quarter of one percent;

3 (b) The local government must have developed a capital facility
4 plan; and

5 (c) The local government must be using all local revenue sources
6 which are reasonably available for funding public works, taking into
7 consideration local employment and economic factors.

8 (2) Except where necessary to address a public health need or
9 substantial environmental degradation, and except as provided in
10 subsection (12) of this section, a county, city, or town planning
11 under RCW 36.70A.040 may not receive financial assistance under this
12 chapter unless it has adopted a comprehensive plan, including a
13 capital facilities plan element, and development regulations as
14 required by RCW 36.70A.040. This subsection does not require any
15 county, city, or town planning under RCW 36.70A.040 to adopt a
16 comprehensive plan or development regulations before requesting or
17 receiving financial assistance under this chapter if such request is
18 made before the expiration of the time periods specified in RCW
19 36.70A.040. A county, city, or town planning under RCW 36.70A.040
20 that has not adopted a comprehensive plan and development regulations
21 within the time periods specified in RCW 36.70A.040 may apply for and
22 receive financial assistance under this chapter if the comprehensive
23 plan and development regulations are adopted as required by RCW
24 36.70A.040 before executing a contractual agreement for financial
25 assistance with the board.

26 (3) In considering awarding financial assistance for public
27 facilities to special districts requesting funding for a proposed
28 facility located in a county, city, or town planning under RCW
29 36.70A.040, the board must consider whether the county, city, or town
30 planning under RCW 36.70A.040 in whose planning jurisdiction the
31 proposed facility is located has adopted a comprehensive plan and
32 development regulations as required by RCW 36.70A.040.

33 (4) (a) The board must develop a process to prioritize
34 applications and funding of loans and grants for public works
35 projects submitted by local governments. The board must consider, at
36 a minimum and in any order, the following factors in prioritizing
37 projects:

38 (i) Whether the project is critical in nature and would affect
39 the health and safety of many people;

40 (ii) The extent to which the project leverages other funds;

1 (iii) The extent to which the project is ready to proceed to
2 construction;

3 (iv) Whether the project is located in an area of high
4 unemployment, compared to the average state unemployment;

5 (v) Whether the project promotes the sustainable use of resources
6 and environmental quality, as applicable;

7 (vi) Whether the project consolidates or regionalizes systems;

8 (vii) Whether the project encourages economic development through
9 mixed-use and mixed income development consistent with chapter 36.70A
10 RCW;

11 (viii) Whether the system is being well-managed in the present
12 and for long-term sustainability;

13 (ix) Achieving equitable distribution of funds by geography and
14 population;

15 (x) The extent to which the project meets the following state
16 policy objectives:

17 (A) Efficient use of state resources;

18 (B) Preservation and enhancement of health and safety;

19 (C) Abatement of pollution and protection of the environment;

20 (D) Creation of new, family-wage jobs, and avoidance of shifting
21 existing jobs from one Washington state community to another;

22 (E) Fostering economic development consistent with chapter 36.70A
23 RCW;

24 (F) Efficiency in delivery of goods and services and
25 transportation; and

26 (G) Reduction of the overall cost of public infrastructure;

27 (xi) Whether the applicant sought or is seeking funding for the
28 project from other sources; and

29 (xii) Other criteria that the board considers necessary to
30 achieve the purposes of this chapter.

31 (b) Before September 1, 2018, and each year thereafter, the board
32 must develop and submit a report regarding the construction loans and
33 grants to the office of financial management and appropriate fiscal
34 committees of the senate and house of representatives. The report
35 must include:

36 (i) The total number of applications and amount of funding
37 requested for public works projects;

38 (ii) A list and description of projects approved in the preceding
39 fiscal year with project scores against the board's prioritization
40 criteria;

1 (iii) The total amount of loan and grants disbursements made from
2 the public works assistance account in the preceding fiscal year;

3 (iv) The total amount of loan repayments in the preceding fiscal
4 year for outstanding loans from the public works assistance account;

5 (v) The total amount of loan repayments due for outstanding loans
6 for each fiscal year over the following ten-year period; and

7 (vi) The total amount of funds obligated and timing of when the
8 funds were obligated in the preceding fiscal year.

9 (c) The maximum amount of funding that the board may provide for
10 any jurisdiction is ten million dollars per biennium.

11 (5) Existing debt or financial obligations of local governments
12 may not be refinanced under this chapter. Each local government
13 applicant must provide documentation of attempts to secure additional
14 local or other sources of funding for each public works project for
15 which financial assistance is sought under this chapter.

16 (6) Before September 1st of each year, the board must develop and
17 submit to the appropriate fiscal committees of the senate and house
18 of representatives a description of the loans and grants made under
19 RCW 43.155.065 and 43.155.068.

20 (7) The board may not sign contracts or otherwise financially
21 obligate funds from the public works assistance account before the
22 legislature has appropriated funds to the board for the purpose of
23 funding public works projects under this chapter.

24 (8) To qualify for loans, grants, or pledges for solid waste or
25 recycling facilities under this chapter, a city or county must
26 demonstrate that the solid waste or recycling facility is consistent
27 with and necessary to implement the comprehensive solid waste
28 management plan adopted by the city or county under chapter 70.95
29 RCW.

30 (9) After January 1, 2010, any project designed to address the
31 effects of stormwater or wastewater on Puget Sound may be funded
32 under this section only if the project is not in conflict with the
33 action agenda developed by the Puget Sound partnership under RCW
34 90.71.310.

35 (10) For projects involving repair, replacement, or improvement
36 of a wastewater treatment plant or other public works facility for
37 which an investment grade efficiency audit is reasonably obtainable,
38 the public works board must require as a contract condition that the
39 project sponsor undertake an investment grade efficiency audit. The

1 project sponsor may finance the costs of the audit as part of its
2 public works assistance account program loan or grant.

3 (11) The board must implement policies and procedures designed to
4 maximize local government consideration of other funds to finance
5 local infrastructure.

6 (12) The provisions in subsection (2) of this section do not
7 apply to a county, city, or town applying for grants and loans under
8 this chapter for projects that support broadband services where such
9 grants and loans will assist the county, city, or town with economic
10 development, disaster resiliency and response, adaptation to public
11 health emergencies such as pandemics, and emergency management.

*Sec. 4 was vetoed. See message at end of chapter.

12 *NEW SECTION. Sec. 5. A new section is added to chapter 43.160
13 RCW to read as follows:

14 The board is prohibited from considering whether a county, city,
15 or town is compliant with chapter 36.70A RCW when considering
16 applications for broadband funding.

*Sec. 5 was vetoed. See message at end of chapter.

17 *NEW SECTION. Sec. 6. A new section is added to chapter 80.36
18 RCW to read as follows:

19 The commission is prohibited from considering whether a county,
20 city, or town is compliant with chapter 36.70A RCW when considering
21 applications for broadband funding.

*Sec. 6 was vetoed. See message at end of chapter.

22 *NEW SECTION. Sec. 7. A new section is added to chapter 43.330
23 RCW to read as follows:

24 The department is prohibited from considering whether a county,
25 city, or town is compliant with chapter 36.70A RCW when considering
26 applications for broadband funding.

*Sec. 7 was vetoed. See message at end of chapter.

Passed by the Senate April 19, 2021.
Passed by the House April 11, 2021.
Approved by the Governor May 13, 2021, with the exception of
certain items that were vetoed.
Filed in Office of Secretary of State May 13, 2021.

Note: Governor's explanation of partial veto is as follows:
"I am returning herewith, without my approval as to Sections 4, 5, 6,
and 7, Second Substitute Senate Bill No. 5368 entitled:

"AN ACT Relating to encouraging rural economic development."

Section 4 of this bill would allow the Public Works Board (Board) to award funding for broadband infrastructure to cities, towns, and counties found to be in noncompliance with the growth management act (GMA). Current law prohibits any funding distributed by the Board to go to a GMA noncompliant jurisdiction unless that funding is necessary to address a public health need or substantial environmental degradation. The new exception provided here does not rise to the same level of urgency established in current law. In addition, an underpinning of the GMA has been that GMA noncompliant jurisdictions are unable to access various forms of infrastructure funding. Broadband is critical infrastructure comparable to roads, bridges, and water systems, and should be treated the same before the Board.

Section 5 prohibits the Community Economic Revitalization Board (CERB) from considering compliance with the GMA as a factor in awarding broadband funding to counties, cities, and towns. CERB does not currently consider the GMA in making funding decisions. This new prohibition is unnecessary.

Section 6 prohibits the Utilities and Transportation Commission (UTC) from considering compliance with the GMA as a factor in awarding broadband funding to counties, cities, and towns. The only funding that the UTC distributes for broadband is the Universal Service Fund (USF). Local governments are not eligible applicants to that program. The USF awards subsidies to small, private telecommunications providers. This new prohibition is also unnecessary.

Section 7 prohibits the Department of Commerce from considering compliance with the GMA as a factor in awarding broadband funding to counties, cities, and towns. Commerce is not currently bound to any consideration of GMA compliance in its decision-making regarding broadband projects. The agency has appropriate autonomy to consider the individual merits and relative benefits of each application for broadband funding. Retaining a high-level of discretion within the agency is desirable to ensure the best and highest use of scarce resources.

For these reasons I have vetoed Sections 4, 5, 6, and 7 of Second Substitute Senate Bill No. 5368.

With the exception of Sections 4, 5, 6, and 7, Second Substitute Senate Bill No. 5368 is approved."

--- END ---