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**SENATE BILL 5190**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Trudeau, Lovelett, Braun, Frame, Hasegawa, Hunt, Kuderer, Liias, Nguyen, Nobles, Pedersen, Shewmake, and C. Wilson

AN ACT Relating to creating more homes for Washington by increasing middle housing in areas traditionally dedicated to single-family detached housing; amending RCW 36.70A.030, 36.70A.280, and 43.21C.495; adding new sections to chapter 36.70A RCW; adding a new section to chapter 64.34 RCW; adding a new section to chapter 64.32 RCW; adding a new section to chapter 64.38 RCW; adding a new section to chapter 64.90 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that Washington is facing an unprecedented housing shortage for its current population and without significant action will not meet its goal of creating 1,000,000 homes by 2044.

Increasing housing options that are more affordable to various income levels is critical to achieving the state's housing goals, including those codified by the legislature under chapter 254, Laws of 2021.

There is continued need for the development of housing at all income levels, including middle housing that will provide a wider variety of housing options and configurations to allow Washingtonians to live near where they work.

To unlock opportunity for Washingtonians it is necessary to lift bans on the development of modest home choices in cities near job centers, transit, and amenity-rich neighborhoods.

Homes developed at higher densities and gentle density housing types are more affordable by design for Washington residents both in their construction and reduced household energy and transportation costs.

While creating more housing options, it is essential for cities to identify areas at higher risk of displacement and establish antidisplacement policies as required in Engrossed Second Substitute House Bill No. 1220 (chapter 254, Laws of 2021).

The state has made historic investments in subsidized affordable housing through the housing trust fund, yet even with these historic investments, the magnitude of the housing shortage requires both public and private investment.

In addition to addressing the housing shortage, allowing more housing options in areas already served by urban infrastructure will reduce the pressure to develop natural and working lands, support key strategies for climate change, food security, and Puget Sound recovery, and save taxpayers and ratepayers money.

**Sec.**  RCW 36.70A.030 and 2021 c 254 s 6 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrative review process" means a development permit process whereby an application is reviewed, approved, or denied by the planning director or the planning director's designee based solely on objective design and development standards that involve no personal or subjective judgment.

(2) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

((~~(2)~~)) (3) "Affordable housing" means, unless the context clearly indicates otherwise, residential housing whose monthly costs, including utilities other than telephone, do not exceed thirty percent of the monthly income of a household whose income is:

(a) For rental housing, sixty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development; or

(b) For owner-occupied housing, eighty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

((~~(3)~~)) (4) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

((~~(4)~~)) (5) "City" means any city or town, including a code city.

((~~(5)~~)) (6) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

((~~(6)~~)) (7) "Cottage housing" means detached dwelling units arranged on two or more sides of a landscaped central area.

(8) "Courtyard apartments" means attached dwelling units arranged on two or more sides of a landscaped central courtyard.

(9) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

((~~(7)~~)) (10) "Department" means the department of commerce.

((~~(8)~~)) (11) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

((~~(9)~~)) (12) "Emergency housing" means temporary indoor accommodations for individuals or families who are homeless or at imminent risk of becoming homeless that is intended to address the basic health, food, clothing, and personal hygiene needs of individuals or families. Emergency housing may or may not require occupants to enter into a lease or an occupancy agreement.

((~~(10)~~)) (13) "Emergency shelter" means a facility that provides a temporary shelter for individuals or families who are currently homeless. Emergency shelter may not require occupants to enter into a lease or an occupancy agreement. Emergency shelter facilities may include day and warming centers that do not provide overnight accommodations.

((~~(11)~~)) (14) "Extremely low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below thirty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

((~~(12)~~)) (15) "Forestland" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forestland is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forestland to other uses.

((~~(13)~~)) (16) "Freight rail dependent uses" means buildings and other infrastructure that are used in the fabrication, processing, storage, and transport of goods where the use is dependent on and makes use of an adjacent short line railroad. Such facilities are both urban and rural development for purposes of this chapter. "Freight rail dependent uses" does not include buildings and other infrastructure that are used in the fabrication, processing, storage, and transport of coal, liquefied natural gas, or "crude oil" as defined in RCW 90.56.010.

((~~(14)~~)) (17) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

((~~(15)~~)) (18) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

((~~(16)~~)) (19) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below eighty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

((~~(17)~~)) (20)(a) "Major transit stop," except as provided in (b) of this subsection, means:

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

(ii) Commuter rail stops;

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

(iv) Stops on bus rapid transit routes;

(v) A stop for a bus or other transit mode providing a minimum of seven days per week of actual fixed route service at intervals of:

(A) Fifteen minutes or fewer on nonholiday weekdays between 9:00 a.m. and 5:00 p.m.;

(B) Thirty minutes or fewer on nonholiday weekdays between 6:00 a.m. and 9:00 a.m. and between 5:00 p.m. and 10:00 p.m.; and

(C) Thirty minutes or fewer on weekend days between 9:00 a.m. and 5:00 p.m.; or

(vi) Washington state ferry terminals.

(b) Alternatively, a definition of "major transit stop" adopted before the effective date of this section by a regional agency planning under the multicounty planning policies authority pursuant to RCW 36.70A.210(7) shall apply to counties and cities which are subject to those multicounty planning policies.

(21) "Middle housing" means buildings that are compatible in scale, form, and character with single-family houses and contain two or more attached, stacked, or clustered homes including duplexes, triplexes, fourplexes, fiveplexes, sixplexes, townhouses, courtyard apartments, and cottage housing.

(22) "Minerals" include gravel, sand, and valuable metallic substances.

((~~(18)~~)) (23) "Moderate-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 120 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

((~~(19)~~)) (24) "Permanent supportive housing" is subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices designed to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors. Permanent supportive housing is paired with on-site or off-site voluntary services designed to support a person living with a complex and disabling behavioral health or physical health condition who was experiencing homelessness or was at imminent risk of homelessness prior to moving into housing to retain their housing and be a successful tenant in a housing arrangement, improve the resident's health status, and connect the resident of the housing with community-based health care, treatment, or employment services. Permanent supportive housing is subject to all of the rights and responsibilities defined in chapter 59.18 RCW.

((~~(20)~~)) (25) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

((~~(21)~~)) (26) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

((~~(22)~~)) (27) "Recreational land" means land so designated under RCW 36.70A.1701 and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under RCW 36.70A.170. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

((~~(23)~~)) (28) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

((~~(24)~~)) (29) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

((~~(25)~~)) (30) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems((~~,~~)) and fire and police protection services((~~, transportation and public transit services, and other public utilities~~)) associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

((~~(26)~~)) (31) "Short line railroad" means those railroad lines designated class II or class III by the United States surface transportation board.

((~~(27)~~)) (32) "Townhouses" means dwelling units constructed in a row of two or more attached units where each dwelling unit shares at least one common wall with an adjacent unit and is accessed by a separate outdoor entrance.

(33) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

((~~(28)~~)) (34) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

((~~(29)~~)) (35) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

((~~(30)~~)) (36) "Very low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below fifty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

((~~(31)~~)) (37) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

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

(1) Any city with a population of 6,000 or more, or any city that is within a contiguous urban growth area with a city with a population above 200,000 based on office of financial management population estimates, as of the effective date of this section, that is required or chooses to plan under RCW 36.70A.040 must provide by ordinance and incorporate into its development regulations, zoning regulations, and other official controls, authorization for the following:

(a) The development of at least four units per lot on all lots zoned for residential use;

(b) The development of six units per lot in all residential zones if two of the six units are affordable; and

(c) The development of at least six units per lot in all residential zones within one-half mile of a major transit stop.

(2) To qualify for the additional units allowed under subsection (1)(b) of this section, the applicant must commit to renting two of the six units at rents that are affordable to low-income households for a term of at least 50 years, and the property must satisfy that commitment and all required affordability and income eligibility conditions adopted by the local government under this chapter. A city must require the applicant to record a covenant or deed restriction that ensures the continuing rental of units subject to these affordability requirements consistent with the conditions in chapter 84.14 RCW for a period of no less than 50 years. The covenant or deed restriction must also address criteria and policies to maintain public benefit if the property is converted to a use other than which continues to provide for permanently affordable low-income housing.

(3) Any city subject to the requirements under subsection (1) of this section that has not adopted local antidisplacement measures as a portion of the city's mandatory housing element under RCW 36.70A.070(2) must, within nine months of the effective date of this section, perform the actions specified in RCW 36.70A.070(2) (e), (f), (g), and (h) for areas within one-half mile of a major transit stop.

(4) Any city subject to the requirements of this section:

(a) May only adopt objective development and design standards on the development of middle housing. Objective development and design standards do not require or allow personal or subjective judgment by a permit administrator. Objective development and design standards may not discourage the development of middle housing through unreasonable costs, fees, delays, or other requirements or actions which individually, or cumulatively, make impracticable the permitting, siting, or construction of all allowed middle housing types or the ownership of a middle housing unit;

(b) Except as provided in (a) of this subsection, shall not require through development regulations any standards for middle housing that are more restrictive than those required for detached single-family residences;

(c) Shall apply to middle housing the same development permit and environmental review processes that apply to detached single-family residences;

(d) Shall apply to middle housing the same critical areas regulations that apply to detached single-family residences;

(e) Shall not require off-street parking as a condition of permitting development of middle housing within one-half mile of a major transit stop;

(f) Shall not require more than one off-street parking space per lot as a condition of permitting development of middle housing on lots smaller than 6,000 square feet; and

(g) Shall not require more than two off-street parking spaces per lot as a condition of permitting development of middle housing on lots greater than 6,000 square feet.

(5) Nothing in this section prohibits a city from permitting detached single-family residences.

(6) The requirements of this section apply and take effect on the latter of:

(a) Twenty-four months following the effective date of this section for cities with a population of 10,000 or more; or

(b) Twelve months after a determination by the office of financial management that a city has reached a population threshold established under this section.

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

(1)(a) The department is directed to provide technical assistance to cities as they implement the requirements under section 3 of this act.

(b) The department shall prioritize such technical assistance to cities demonstrating the greatest need.

(2)(a) The department shall publish model middle housing ordinances no later than 18 months following the effective date of this section.

(b) In any city subject to section 3 of this act that has not passed ordinances, regulations, or other official controls within the time frames provided under section 3(6) of this act, the model ordinance supersedes, preempts, and invalidates local development regulations until the city takes all actions necessary to implement section 3 of this act.

(3)(a) The department is directed to establish a process by which cities implementing the requirements of section 3 of this act may seek approval of necessary local actions.

(b) The department may approve actions under this section for cities that have, by the effective date of this section, adopted permanent development regulations that are substantially similar to the requirements of this act.

(c) Any local actions approved by the department pursuant to (a) of this subsection to implement the requirements under section 3 of this act are exempt from appeals under this chapter and chapter 43.21C RCW.

(d) The department's final decision to approve or reject actions by cities implementing section 3 of this act may be appealed to the growth management hearings board by filing a petition as provided in RCW 36.70A.290.

**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;

(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; or

(f) That the department's final decision to approve or reject actions by a city implementing section 3 of this act 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.

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

(1) Any city subject to the requirements under section 3 of this act may apply to the department for, and the department may certify, an extension of the implementation timelines established under section 3(6) of this act.

(2) An extension certified under this section may be applied only to specific areas where a city can demonstrate that water, sewer, or stormwater services are currently deficient, or are expected to be deficient within the next five years, and for which the local government has established a plan of action that will remedy the deficiency in those services on a specific timeline. The department may certify no more than one additional extension of a city's remediation timeline.

(3) An application for an implementation timeline extension by a city must be filed with the department no later than 24 months following the effective date of this section.

(4) The department may establish by rule any procedures necessary to implement this section.

**Sec.**  RCW 43.21C.495 and 2022 c 246 s 3 are each amended to read as follows:

(1) Adoption of ordinances, development regulations and amendments to such regulations, and other nonproject actions taken by a city to implement: The actions specified in section 2, chapter 246, Laws of 2022 unless the adoption of such ordinances, development regulations and amendments to such regulations, or other nonproject actions has a probable significant adverse impact on fish habitat; and the increased residential building capacity actions identified in RCW 36.70A.600(1), with the exception of the action specified in RCW 36.70A.600(1)(f), are not subject to administrative or judicial appeals under this chapter.

(2) Amendments to development regulations and other nonproject actions taken by a city to implement the requirements under section 3 of this act pursuant to section 4(3)(b) of this act are not subject to administrative or judicial appeals under this chapter.

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

A city that adopts development regulations that are consistent with and implement this act and RCW 35A.21.430 or 35.21.683 shall be deemed in compliance with the requirements of RCW 36.70A.070(2)(d) until June 30, 2032.

NEW SECTION. **Sec.**  A new section is added to chapter 64.34 RCW to read as follows:

A declaration created after the effective date of this section and applicable to an area within a city subject to the middle housing requirements in section 3 of this act may not actively or effectively prohibit the construction, development, or use of additional housing units as required in section 3 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 64.32 RCW to read as follows:

A declaration created after the effective date of this section and applicable to an association of apartment owners located within an area of a city subject to the middle housing requirements in section 3 of this act may not actively or effectively prohibit the construction, development, or use of additional housing units as required in section 3 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 64.38 RCW to read as follows:

Governing documents of associations within cities subject to the middle housing requirements in section 3 of this act that are created after the effective date of this section may not actively or effectively prohibit the construction, development, or use of additional housing units as required in section 3 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 64.90 RCW to read as follows:

Declarations and governing documents of a common interest community within cities subject to the middle housing requirements in section 3 of this act that are created after the effective date of this section may not actively or effectively prohibit the construction, development, or use of additional housing units as required in section 3 of this act.

**--- END ---**