CERTIFICATION OF ENROLLMENT

**SECOND SUBSTITUTE SENATE BILL 5412**

Chapter 368, Laws of 2023

68th Legislature

2023 Regular Session

STATE ENVIRONMENTAL POLICY ACT—LOCAL LAND USE—CATEGORICAL EXEMPTIONS—HOUSING

EFFECTIVE DATE: July 23, 2023

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| Passed by the Senate April 22, 2023Yeas 41 Nays 8DENNY HECK**President of the Senate**Passed by the House April 17, 2023Yeas 95 Nays 2LAURIE JINKINS**Speaker of the House of Representatives** | CERTIFICATEI, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5412** as passed by the Senate and the House of Representatives on the dates hereon set forth.SARAH BANNISTERSecretary |
| Approved May 9, 2023 11:10 AM | May 10, 2023 |
| JAY INSLEE**Governor of the State of Washington** | **Secretary of State** **State of Washington** |

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**SECOND SUBSTITUTE SENATE BILL 5412**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

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

**By** Senate Transportation (originally sponsored by Senators Salomon, Liias, Kuderer, Lovelett, Mullet, and Pedersen)

AN ACT Relating to reducing local governments' land use permitting workloads, by ensuring objective and timely design review for housing and other land use proposals within cities and counties and allowing proposed housing within urban growth boundaries to rely on environmental reviews completed at the comprehensive planning level; and amending RCW 43.21C.229.

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

**Sec.**  RCW 43.21C.229 and 2020 c 87 s 1 are each amended to read as follows:

(1) ((~~In order~~)) The purpose of this section is to accommodate infill and housing development and thereby realize the goals and policies of comprehensive plans adopted according to chapter 36.70A RCW((~~, a~~)).

(2) A city or county planning under RCW 36.70A.040 is authorized by this section to establish categorical exemptions from the requirements of this chapter.(( ~~An exemption adopted under this section applies even if it differs from the categorical exemptions adopted by rule of the department under RCW 43.21C.110(1)(a).~~)) An exemption may be adopted by a city or county under this subsection if it meets the following criteria:

(a) It categorically exempts government action related to development proposed to fill in an urban growth area, designated according to RCW 36.70A.110, where current density and intensity of use in the area is roughly equal to or lower than called for in the goals and policies of the applicable comprehensive plan and the development is either:

(i) Residential development;

(ii) Mixed-use development; or

(iii) Commercial development up to ((~~sixty-five thousand~~)) 65,000 square feet, excluding retail development;

(b) It does not exempt government action related to development that is inconsistent with the applicable comprehensive plan or would clearly exceed the density or intensity of use called for in the goals and policies of the applicable comprehensive plan;

(c) The local government considers the specific probable adverse environmental impacts of the proposed action and determines that these specific impacts are adequately addressed by the development regulations or other applicable requirements of the comprehensive plan, subarea plan element of the comprehensive plan, planned action ordinance, or other local, state, or federal rules or laws; and

(d)(i) The city or county's applicable comprehensive plan was previously subjected to environmental analysis through an environmental impact statement under the requirements of this chapter prior to adoption; or

(ii) The city or county has prepared an environmental impact statement that considers the proposed use or density and intensity of use in the area proposed for an exemption under this section.

((~~(2) Any~~)) (3) All project actions that propose to develop one or more residential housing units within the incorporated areas in an urban growth area designated pursuant to RCW 36.70A.110 or middle housing within the unincorporated areas in an urban growth area designated pursuant to RCW 36.70A.110, and that meet the criteria identified in (a) and (b) of this subsection, are categorically exempt from the requirements of this chapter. For purposes of this section, "middle housing" has the same meaning as in RCW 36.70A.030 as amended by chapter . . . (Engrossed Second Substitute House Bill No. 1110), Laws of 2023. Jurisdictions shall satisfy the following criteria prior to the adoption of the categorical exemption under this subsection (3):

(a) The city or county shall find that the proposed development is consistent with all development regulations implementing an applicable comprehensive plan adopted according to chapter 36.70A RCW by the jurisdiction in which the development is proposed, with the exception of any development regulation that is inconsistent with applicable provisions of chapter 36.70A RCW; and

(b) The city or county has prepared environmental analysis that considers the proposed use or density and intensity of use in the area proposed for an exemption under this section and analyzes multimodal transportation impacts, including impacts to neighboring jurisdictions, transit facilities, and the state transportation system.

(i) Such environmental analysis shall include documentation that the requirements for environmental analysis, protection, and mitigation for impacts to elements of the environment have been adequately addressed for the development exempted. The requirements may be addressed in locally adopted comprehensive plans, subarea plans, adopted development regulations, other applicable local ordinances and regulations, or applicable state and federal regulations. The city or county must document its consultation with the department of transportation on impacts to state-owned transportation facilities including consideration of whether mitigation is necessary for impacts to transportation facilities.

(ii) Before finalizing the environmental analysis pursuant to (b)(i) of this subsection (3), the city or county shall provide a minimum of 60 days' notice to affected tribes, relevant state agencies, other jurisdictions that may be impacted, and the public. If a city or county identifies that mitigation measures are necessary to address specific probable adverse impacts, the city or county must address those impacts by requiring mitigation identified in the environmental analysis pursuant to this subsection (3)(b) through locally adopted comprehensive plans, subarea plans, development regulations, or other applicable local ordinances and regulations. Mitigation measures shall be detailed in an associated environmental determination.

(iii) The categorical exemption is effective 30 days following action by a city or county pursuant to (b)(ii) of this subsection (3).

(4) Until September 30, 2025, all project actions that propose to develop one or more residential housing or middle housing units within a city west of the crest of the Cascade mountains with a population of 700,000 or more are categorically exempt from the requirements of this chapter. After September 30, 2025, project actions that propose to develop one or more residential housing or middle housing units within the city may utilize the categorical exemption in subsection (3) of this section.

(5) Any categorical exemption adopted by a city or county under this section applies even if it differs from the categorical exemptions adopted by rule of the department under RCW 43.21C.110(1)(a). Nothing in this section shall invalidate categorical exemptions or environmental review procedures adopted by a city or county under a planned action pursuant to RCW 43.21C.440. However, any categorical exemption adopted by a city or county under this section shall be subject to the rules of the department adopted according to RCW 43.21C.110(1)(a) that provide exceptions to the use of categorical exemptions adopted by the department.

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Passed by the Senate April 22, 2023.

Passed by the House April 17, 2023.

Approved by the Governor May 9, 2023.

Filed in Office of Secretary of State May 10, 2023.