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**SUBSTITUTE SENATE BILL 5374**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senate Local Government, Land Use & Tribal Affairs (originally sponsored by Senators Short, Lovelett, Shewmake, and Torres)

READ FIRST TIME 01/27/23.

1 AN ACT Relating to the adoption of county critical area  
2 ordinances by cities; amending RCW 36.70A.060; and creating a new  
3 section.

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

5 NEW SECTION. **Sec. 1.** The growth management act has been in  
6 place for over 30 years. As time has passed, the legislature has  
7 found that the act needs to be adjusted to accommodate difficulties  
8 that have been encountered over time. The legislature finds that  
9 small cities should be able to adopt the critical areas ordinances of  
10 the counties pursuant to the advice of the work group engaged to make  
11 such positive changes to the act.

12 **Sec. 2.** RCW 36.70A.060 and 2017 3rd sp.s. c 18 s 3 are each  
13 amended to read as follows:

14 (1)(a) Each county that is required or chooses to plan under RCW  
15 36.70A.040, and each city within such county, shall adopt development  
16 regulations on or before September 1, 1991, to assure the  
17 conservation of agricultural, forest, and mineral resource lands  
18 designated under RCW 36.70A.170. Regulations adopted under this  
19 subsection may not prohibit uses legally existing on any parcel prior  
20 to their adoption and shall remain in effect until the county or city

1 adopts development regulations pursuant to RCW 36.70A.040. Such  
2 regulations shall assure that the use of lands adjacent to  
3 agricultural, forest, or mineral resource lands shall not interfere  
4 with the continued use, in the accustomed manner and in accordance  
5 with best management practices, of these designated lands for the  
6 production of food, agricultural products, or timber, or for the  
7 extraction of minerals. Any county located to the west of the crest  
8 of the Cascade mountains that has both a population of at least four  
9 hundred thousand and a border that touches another state, and any  
10 city in such county, may adopt development regulations to assure that  
11 agriculture, forest, and mineral resource lands adjacent to short  
12 line railroads may be developed for freight rail dependent uses.

13 (b) Counties and cities shall require that all plats, short  
14 plats, development permits, and building permits issued for  
15 development activities on, or within five hundred feet of, lands  
16 designated as agricultural lands, forestlands, or mineral resource  
17 lands, contain a notice that the subject property is within or near  
18 designated agricultural lands, forestlands, or mineral resource lands  
19 on which a variety of commercial activities may occur that are not  
20 compatible with residential development for certain periods of  
21 limited duration. The notice for mineral resource lands shall also  
22 inform that an application might be made for mining-related  
23 activities, including mining, extraction, washing, crushing,  
24 stockpiling, blasting, transporting, and recycling of minerals.

25 (c) Each county that adopts a resolution of partial planning  
26 under RCW 36.70A.040(2)(b), and each city within such county, shall  
27 adopt development regulations within one year after the adoption of  
28 the resolution of partial planning to assure the conservation of  
29 agricultural, forest, and mineral resource lands designated under RCW  
30 36.70A.170. Regulations adopted under this subsection (1)(c) must  
31 comply with the requirements governing regulations adopted under (a)  
32 of this subsection.

33 (d)(i) A county that adopts a resolution of partial planning  
34 under RCW 36.70A.040(2)(b) and that is not in compliance with the  
35 planning requirements of this section, RCW 36.70A.040(4),  
36 36.70A.070(5), 36.70A.170, and 36.70A.172 at the time the resolution  
37 is adopted must, by January 30, 2017, apply for a determination of  
38 compliance from the department finding that the county's development  
39 regulations, including development regulations adopted to protect  
40 critical areas, and comprehensive plans are in compliance with the

1 requirements of this section, RCW 36.70A.040(4), 36.70A.070(5),  
2 36.70A.170, and 36.70A.172. The department must approve or deny the  
3 application for a determination of compliance within one hundred  
4 twenty days of its receipt or by June 30, 2017, whichever date is  
5 earlier.

6 (ii) If the department denies an application under (d)(i) of this  
7 subsection, the county and each city within is obligated to comply  
8 with all requirements of this chapter and the resolution for partial  
9 planning adopted under RCW 36.70A.040(2)(b) is no longer in effect.

10 (iii) A petition for review of a determination of compliance  
11 under (d)(i) of this subsection may only be appealed to the growth  
12 management hearings board within (~~sixty~~) 60 days of the issuance of  
13 the decision by the department.

14 (iv) In the event of a filing of a petition in accordance with  
15 (d)(iii) of this subsection, the county and the department must  
16 equally share the costs incurred by the department for defending an  
17 approval of determination of compliance that is before the growth  
18 management hearings board.

19 (v) The department may implement this subsection (1)(d) by  
20 adopting rules related to determinations of compliance. The rules may  
21 address, but are not limited to: The requirements for applications  
22 for a determination of compliance; charging of costs under (d)(iv) of  
23 this subsection; procedures for processing applications; criteria for  
24 the evaluation of applications; issuance and notice of department  
25 decisions; and applicable timelines.

26 (e) Any county that borders both the Cascade mountains and  
27 another country and has a population of less than fifty thousand  
28 people, and any city in such county, may adopt development  
29 regulations to assure that agriculture, forest, and mineral resource  
30 lands adjacent to short line railroads may be developed for freight  
31 rail dependent uses.

32 (2) Each county and city shall adopt development regulations that  
33 protect critical areas that are required to be designated under RCW  
34 36.70A.170. For counties and cities that are required or choose to  
35 plan under RCW 36.70A.040, such development regulations shall be  
36 adopted on or before September 1, 1991. For the remainder of the  
37 counties and cities, such development regulations shall be adopted on  
38 or before March 1, 1992.

39 (3) Such counties and cities shall review these designations and  
40 development regulations when adopting their comprehensive plans under

1 RCW 36.70A.040 and implementing development regulations under RCW  
2 36.70A.120 and may alter such designations and development  
3 regulations to (~~insure~~) ensure consistency.

4 (4)(a) A city with a population fewer than 25,000 may adopt the  
5 county's critical areas regulations by reference to satisfy the  
6 requirements under this section to designate and protect critical  
7 areas; provided, that the county's critical areas regulations are not  
8 subject to any outstanding administrative or judicial appeals at the  
9 time of the city's adoption. Nothing in this subsection prohibits a  
10 city from adopting its own critical areas regulations.

11 (b) The city legislative action adopting the county regulations  
12 by reference must incorporate future amendments to the critical areas  
13 policies and development regulations of the county.

14 (c) A city that adopts the county's critical areas regulations by  
15 reference is not required to take legislative action to review and  
16 update development regulations protecting critical areas under RCW  
17 36.70A.130.

18 (d) If grant funding is available for a local jurisdiction's  
19 periodic comprehensive planning updates as required in RCW  
20 36.70A.070, and a city has adopted by reference the county's critical  
21 areas regulations as allowed in (a) through (c) of this subsection,  
22 the county in which the city is located shall be entitled to the  
23 portion of the city's grant funding that would otherwise have been  
24 utilized for updating the city's critical areas regulations. The  
25 department is authorized to determine what portion of the available  
26 grant funding the city would have received for the critical areas  
27 regulations update the county is entitled to receive.

28 (5) Forestland and agricultural land located within urban growth  
29 areas shall not be designated by a county or city as forestland or  
30 agricultural land of long-term commercial significance under RCW  
31 36.70A.170 unless the city or county has enacted a program  
32 authorizing transfer or purchase of development rights.

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