SB 5609 - S AMD **735**
By Senator Kauffman

NOT CONSIDERED 03/12/2026

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that preservation of tribal cultural resources is a state interest that must be considered alongside development. It further finds certain exemptions from the state environmental protection act were not intended to permit irreversible harm to cultural resources. This act restores balance by requiring review and consultation when tribal cultural resources may be affected, while maintaining pathways for development. It is the intent that projects move forward responsibly with informed local, state, and tribal planning.

Sec. 2. RCW 43.21C.130 and 1974 ex.s. c 179 s 10 are each amended to read as follows:

(1) The department of ecology, in consultation with concerned state agencies, shall with the assistance of the associations of county prosecutors and city attorneys, the association of county elected officials, the Washington state association of counties, and the association of cities, draft model ordinances for use by counties, cities and towns in drafting their ordinances under this chapter.

(2) By June 1, 2027, the department of archaeology and historic preservation, in consultation with federally recognized Indian tribes and with input from the Washington state association of counties, the association of cities, and the department of ecology shall draft a model ordinance for archaeological and cultural resource protection. The model ordinance must include minimum standards that are required to be included in the ordinance adopted by a local government in subsection (3) of this section. The model ordinance must:

(a) Specify the actions a local government must take to protect archaeological and cultural resources when a project action under a

categorical exemption identified in subsection (6) of this section is being used; and

(b) Require the local government to have a mutually agreed upon information and data-sharing agreement with the department of archaeology and historic preservation that was developed in consultation with affected federally recognized tribes.

(3) Beginning July 2, 2028, as a prerequisite to using a categorical exemption authorized under RCW 43.21C.229, 43.21C.240, or adopted in rule pursuant to RCW 43.21C.110, a local government must have adopted an ordinance protecting archaeological and cultural resources. A local government shall satisfy the requirements of this subsection by either:

(a) Developing an ordinance protecting archaeological and cultural resources that contains the minimum requirements developed under subsection (2) of this section and in consultation with affected federally recognized Indian tribes; or

(b) If a mutually agreeable ordinance is not developed with affected tribes under (a) of this subsection, adopting the model ordinance developed under subsection (2) of this section.

(4) In developing an ordinance under subsection (3)(a) of this section, a local government is encouraged to enter into good faith negotiations to develop a mutually agreeable ordinance with affected tribes in regard to collaboration and participation in the review of any adverse archaeological or cultural resource impacts.

(5) An ordinance protecting archaeological and cultural resources that was adopted by a local government prior to January 1, 2026, and is substantially similar to the minimum requirements established under subsection (2) of this section shall be considered sufficient for the purposes of this section.

(6) The department of ecology shall establish in rule the development activities where:

(a) Ground disturbance is likely to occur; and

(b) Archaeological and cultural resources could be disturbed and must be considered prior to issuing a categorical exemption under RCW 43.21C.229, 43.21C.240, and categorical exemptions adopted in rule pursuant to RCW 43.21C.110.

(7) For the purposes of this section, "ground disturbance" means any activity resulting in excavation, grading, trenching, filling, compaction, or other physical alteration of the surface or subsurface of the earth. Maintenance, remodeling, or repair activities that do

not cause ground disturbance are not subject to the requirements of this section.

Sec. 3. RCW 43.21C.229 and 2025 c 267 s 7 are each amended to read as follows:

(1) 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.

(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 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 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.

(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 332, 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) All project actions that propose to develop residential or mixed-use development within a station area are categorically exempt from the requirements of this chapter, 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. For the purpose of this subsection:

(a) "Mixed-use development" has the same meaning as provided in RCW 36.70A.840; and

(b) "Station area" has the same meaning as provided in RCW 36.70A.030.

(6) 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.

(7) Any city or county must, as a prerequisite to using a categorical exemption authorized by this section, have adopted an ordinance as required by RCW 43.21C.130.

Sec. 4. RCW 43.21C.240 and 2003 c 298 s 2 are each amended to read as follows:

(1) If the requirements of subsection (2) of this section are satisfied, a county, city, or town reviewing a project action shall determine that the requirements for environmental analysis, protection, and mitigation measures in the county, city, or town's development regulations and comprehensive plans adopted under chapter 36.70A RCW, and in other applicable local, state, or federal laws and rules provide adequate analysis of and mitigation for the specific adverse environmental impacts of the project action to which the requirements apply. Rules adopted by the department according to RCW 43.21C.110 regarding project specific impacts that may not have been adequately addressed apply to any determination made under this section. In these situations, in which all adverse environmental impacts will be mitigated below the level of significance as a result of mitigation measures included by changing, clarifying, or conditioning of the proposed action and/or regulatory requirements of development regulations adopted under chapter 36.70A RCW or other local, state, or federal laws, a determination of nonsignificance or a mitigated determination of nonsignificance is the proper threshold determination.

(2) A county, city, or town shall make the determination provided for in subsection (1) of this section if:

(a) In the course of project review, including any required environmental analysis, 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, or other local, state, or federal rules or laws; and

(b) The local government bases or conditions its approval on compliance with these requirements or mitigation measures.

(3) If a county, city, or town's comprehensive plans, subarea plans, and development regulations adequately address a project's probable specific adverse environmental impacts, as determined under subsections (1) and (2) of this section, the county, city, or town shall not impose additional mitigation under this chapter during project review. Project review shall be integrated with environmental analysis under this chapter.

(4) A comprehensive plan, subarea plan, or development regulation shall be considered to adequately address an impact if the county, city, or town, through the planning and environmental review process under chapter 36.70A RCW and this chapter, has identified the specific adverse environmental impacts and:

(a) The impacts have been avoided or otherwise mitigated; or

(b) The legislative body of the county, city, or town has designated as acceptable certain levels of service, land use designations, development standards, or other land use planning required or allowed by chapter 36.70A RCW.

(5) In deciding whether a specific adverse environmental impact has been addressed by an existing rule or law of another agency with jurisdiction with environmental expertise with regard to a specific environmental impact, the county, city, or town shall consult orally or in writing with that agency and may expressly defer to that agency. In making this deferral, the county, city, or town shall base or condition its project approval on compliance with these other existing rules or laws.

(6) Nothing in this section limits the authority of an agency in its review or mitigation of a project to adopt or otherwise rely on environmental analyses and requirements under other laws, as provided by this chapter.

(7) This section shall apply only to a county, city, or town planning under RCW 36.70A.040.

(8) Any county, city, or town must, as a prerequisite to using a categorical exemption authorized by this section, have adopted an ordinance as required by RCW 43.21C.130.

Sec. 5. RCW 43.21C.110 and 2012 1st sp.s. c 1 s 311 are each amended to read as follows:

It shall be the duty and function of the department of ecology:

(1) To adopt and amend rules of interpretation and implementation of this chapter, subject to the requirements of chapter 34.05 RCW, for the purpose of providing uniform rules and guidelines to all branches of government including state agencies, political subdivisions, public and municipal corporations, and counties. The proposed rules shall be subject to full public hearings requirements associated with rule adoption. Suggestions for modifications of the proposed rules shall be considered on their merits, and the department shall have the authority and responsibility for full and

appropriate independent adoption of rules, assuring consistency with this chapter as amended and with the preservation of protections afforded by this chapter. The rule-making powers authorized in this section shall include, but shall not be limited to, the following phases of interpretation and implementation of this chapter:

(a) Categories of governmental actions which are not to be considered as potential major actions significantly affecting the quality of the environment, including categories pertaining to applications for water right permits pursuant to chapters 90.03 and 90.44 RCW. The types of actions included as categorical exemptions in the rules shall be limited to those types which are not major actions significantly affecting the quality of the environment. The rules shall provide for certain circumstances where actions which potentially are categorically exempt require environmental review. An action that is categorically exempt under the rules adopted by the department may not be conditioned or denied under this chapter.

(b) Rules for criteria and procedures applicable to the determination of when an act of a branch of government is a major action significantly affecting the quality of the environment for which a detailed statement is required to be prepared pursuant to RCW 43.21C.030.

(c) Rules and procedures applicable to the preparation of detailed statements and other environmental documents, including but not limited to rules for timing of environmental review, obtaining comments, data and other information, and providing for and determining areas of public participation which shall include the scope and review of draft environmental impact statements.

(d) Scope of coverage and contents of detailed statements assuring that such statements are simple, uniform, and as short as practicable; statements are required to analyze only reasonable alternatives and probable adverse environmental impacts which are significant, and may analyze beneficial impacts.

(e) Rules and procedures for public notification of actions taken and documents prepared.

(f) Definition of terms relevant to the implementation of this chapter including the establishment of a list of elements of the environment. Analysis of environmental considerations under RCW 43.21C.030(2) may be required only for those subjects listed as elements of the environment (or portions thereof). The list of elements of the environment shall consist of the "natural" and

"built" environment. The elements of the built environment shall consist of public services and utilities (such as water, sewer, schools, fire and police protection), transportation, environmental health (such as explosive materials and toxic waste), and land and shoreline use (including housing, and a description of the relationships with land use and shoreline plans and designations, including population).

(g) Rules for determining the obligations and powers under this chapter of two or more branches of government involved in the same project significantly affecting the quality of the environment.

(h) Methods to assure adequate public awareness of the preparation and issuance of detailed statements required by RCW 43.21C.030(2)(c).

(i) To prepare rules for projects setting forth the time limits within which the governmental entity responsible for the action shall comply with the provisions of this chapter.

(j) Rules for utilization of a detailed statement for more than one action and rules improving environmental analysis of nonproject proposals and encouraging better interagency coordination and integration between this chapter and other environmental laws.

(k) Rules relating to actions which shall be exempt from the provisions of this chapter in situations of emergency.

(l) Rules relating to the use of environmental documents in planning and decision making and the implementation of the substantive policies and requirements of this chapter, including procedures for appeals under this chapter.

(m) Rules and procedures that provide for the integration of environmental review with project review as provided in RCW 43.21C.240. The rules and procedures shall be jointly developed with the department of commerce and shall be applicable to the preparation of environmental documents for actions in counties, cities, and towns planning under RCW 36.70A.040. The rules and procedures shall also include procedures and criteria to analyze planned actions under RCW 43.21C.440 and revisions to the rules adopted under this section to ensure that they are compatible with the requirements and authorizations of chapter 347, Laws of 1995, as amended by chapter 429, Laws of 1997. Ordinances or procedures adopted by a county, city, or town to implement the provisions of chapter 347, Laws of 1995 prior to the effective date of rules adopted under this subsection (1)(m) shall continue to be effective until the adoption

of any new or revised ordinances or procedures that may be required. If any revisions are required as a result of rules adopted under this subsection (1)(m), those revisions shall be made within the time limits specified in RCW 43.21C.120.

(2) In exercising its powers, functions, and duties under this section, the department may:

(a) Consult with the state agencies and with representatives of science, industry, agriculture, labor, conservation organizations, state and local governments, and other groups, as it deems advisable; and

(b) Utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies, organizations, and individuals, in order to avoid duplication of effort and expense, overlap, or conflict with similar activities authorized by law and performed by established agencies.

(3) Rules adopted pursuant to this section shall be subject to the review procedures of chapter 34.05 RCW.

(4) Any rules adopted under the authority of subsection (1) of this section that create a categorical exemption to this chapter must require a local government, as a prerequisite to using the categorical exemption authorized by this section, to have adopted an ordinance as required by RCW 43.21C.130."

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NOT CONSIDERED 03/12/2026

On page 1, line 3 of the title, after "act;" strike the remainder of the title and insert "amending RCW 43.21C.130, 43.21C.229, 43.21C.240, and 43.21C.110; and creating a new section."

EFFECT: • Directs the department of archaeology and historic preservation, in consultation with federally recognized Indian tribes, cities, and counties to develop a model ordinance for the protection of archaeological and cultural resources.

• Requires, beginning July 2, 2028, and as a prerequisite to a local government using categorical exemptions related to GMA planning, infill housing, and exemptions adopted by rule, that the local government have adopted a local ordinance protecting archaeological and cultural resources.

• Provides that a local ordinance adopted prior to January 1, 2026, that is substantially similar to the requirements in the model ordinance, are sufficient for the purposes of the bill.

• Directs the department of ecology to complete rule making about which project activities under the covered categorical exemptions are likely to cause ground disturbance and require a local government to have adopted an ordinance.

• Defines "ground disturbance."

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