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**HOUSE BILL 2388**

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**State of Washington**

**69th Legislature**

**2026 Regular Session**

**By** Representatives Hall, Doglio, Ramel, Reed, Parshley, Duerr, Kloba, Gregerson, and Bernbaum

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1 AN ACT Relating to the siting of distributed energy generation  
2 resources on agricultural lands in a manner that does not interfere  
3 with the continued use of such lands for agricultural production; and  
4 amending RCW 43.21F.100, 36.70A.177, and 36.70A.060.

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

6 **Sec. 1.** RCW 43.21F.100 and 2025 c 265 s 2 are each amended to  
7 read as follows:

8 (1) The following categories of clean energy facilities and  
9 nonproject activities that reduce environmental impacts are  
10 determined to constitute distributed energy priorities:

11 (a) Solar energy generation and accompanying energy storage and  
12 electricity transmission and distribution, including vehicle charging  
13 equipment, when such facilities are located:

14 (i) Within the easement, right-of-way, or existing footprint of  
15 electrical transmission facilities or electric utility infrastructure  
16 sites;

17 (ii) Within the easement, right-of-way, or existing footprint of  
18 a state highway or city or county road;

19 (iii) On structures over or enclosing irrigation canals, drainage  
20 ditches, and irrigation, agricultural, livestock supply, stormwater,

1 or wastewater reservoirs or similar impoundments of state waters that  
2 do not host salmon or steelhead trout runs;

3 (iv) On elevated structures over parking lots;

4 (v) On lands within a transportation facility, including but not  
5 limited to airports and railroad facilities, or restricted from other  
6 developments by transportation facility operations;

7 (vi) On closed or capped portions of landfills;

8 (vii) On reclaimed or former surface mine lands or contaminated  
9 sites that have been remediated under chapter 70A.305 RCW or the  
10 federal comprehensive environmental response, compensation, and  
11 liability act (42 U.S.C. Sec. 9601 et seq.) in a manner that includes  
12 an asphalt or soil cap;

13 (viii) As an agrivoltaic facility; (~~and~~)

14 (ix) As a pivot corner facility; and

15 (x) On existing structures;

16 (b) Wind energy generation that is not a utility-scale wind  
17 energy facility as defined in RCW 70A.550.010, and accompanying  
18 energy storage and transmission and distribution equipment, including  
19 vehicle charging equipment;

20 (c) Energy storage, when such facilities are located:

21 (i) Within the easement, right-of-way, or existing footprint of  
22 electrical transmission facilities or electric utility infrastructure  
23 sites;

24 (ii) Within the easement, right-of-way, or existing footprint of  
25 a state highway or city or county road;

26 (iii) On lands within a transportation facility, including but  
27 not limited to airports and railroad facilities, or restricted from  
28 other developments by transportation facility operations;

29 (iv) On closed or capped portions of landfills;

30 (v) On reclaimed or former surface mine lands;

31 (vi) On contaminated sites that have been remediated under  
32 chapter 70A.305 RCW or the federal comprehensive environmental  
33 response, compensation, and liability act (42 U.S.C. Sec. 9601 et  
34 seq.) in a manner that includes an asphalt or soil cap; and

35 (vii) On or in existing structures;

36 (d) Microgrids. For purposes of this section, "microgrids" are a  
37 group of interconnected loads, energy generation, and other  
38 distributed energy resources that act as a single controllable entity  
39 with respect to the electric grid. A microgrid can operate both  
40 autonomously from and synchronous with the central electric grid;

1 (e) Programs that reduce electric demand, manage the level or  
2 timing of electricity consumption, or provide electricity storage,  
3 renewable or nonemitting electric energy, capacity, or ancillary  
4 services to an electric utility and that are located on the  
5 distribution system, any subsystem of the distribution system, or  
6 behind the customer meter, including conservation and energy  
7 efficiency; and

8 (f) Programs that reduce energy demand, manage the level or  
9 timing of energy consumption, or provide thermal energy storage.

10 (2) (a) The department must review and, when appropriate,  
11 periodically recommend to the legislature additional types of  
12 distributed energy priorities for inclusion on the list under  
13 subsection (1) of this section.

14 (b) The identification of distributed energy priorities in  
15 subsection (1) of this section applies to the maximum extent  
16 practical under state and federal law, but does not include any  
17 development sites or activities prohibited under other state or  
18 federal laws.

19 (3) (a) For purposes of this section, "agrivoltaic facility" means  
20 a ground-mounted photovoltaic solar energy system that is designed to  
21 be operated coincident with continued productive agricultural use of  
22 the land.

23 (b) Eligible agricultural products and uses include any  
24 combination of:

25 (i) Crop production;

26 (ii) Grazing;

27 (iii) Animal husbandry; and

28 (iv) Apiaries with pollinator habitat that have been designed and  
29 installed to enable the agricultural producer the flexibility to  
30 change what products are produced, raised, or grown at any point  
31 throughout the life of the facility.

32 (c) An agrivoltaic facility must not permanently or significantly  
33 degrade the agricultural or ecological productivity of the land after  
34 the cessation of the operation of the facility or involve the sale of  
35 a water right associated with the land.

36 (d) An agrivoltaic facility must be constructed, installed, and  
37 operated to achieve integrated and simultaneous production of both  
38 solar energy and marketable agricultural products by an agricultural  
39 producer:

40 (i) On land beneath or between rows of solar panels, or both; and

1 (ii) As soon as agronomically feasible and optimal for the  
2 agricultural producer after the commercial solar operation date, and  
3 continuing until facility decommissioning.

4 (e) Solar panel arrays must be designed and installed in a manner  
5 that supports the continuation of a viable farm operation for the  
6 life of the array, and must consider, as appropriate, the  
7 availability of light, water infrastructure for crops or animals, and  
8 panel height and spacing relative to farm machinery needs.

9 (4) For purposes of this section, "pivot corner facility" means a  
10 ground-mounted photovoltaic solar energy system on noncultivated land  
11 immediately adjacent to and outside of a center-pivot irrigated  
12 cropland area but within the same agricultural field. A pivot corner  
13 facility is designed to be operated coincident with continued  
14 productive agricultural use of irrigated agricultural land adjacent  
15 to the pivot corner facility. A pivot corner facility must not  
16 involve the sale of a water right associated with the land.

17 **Sec. 2.** RCW 36.70A.177 and 2006 c 147 s 1 are each amended to  
18 read as follows:

19 (1) A county or a city may use a variety of innovative zoning  
20 techniques in areas designated as agricultural lands of long-term  
21 commercial significance under RCW 36.70A.170. The innovative zoning  
22 techniques should be designed to conserve agricultural lands and  
23 encourage the agricultural economy. Except as provided in subsection  
24 (3) of this section, a county or city should encourage  
25 nonagricultural uses to be limited to lands with poor soils or  
26 otherwise not suitable for agricultural purposes.

27 (2) Innovative zoning techniques a county or city may consider  
28 include, but are not limited to:

29 (a) Agricultural zoning, which limits the density of development  
30 and restricts or prohibits nonfarm uses of agricultural land and may  
31 allow accessory uses, including nonagricultural accessory uses and  
32 activities, that support, promote, or sustain agricultural operations  
33 and production, as provided in subsection (3) of this section;

34 (b) Cluster zoning, which allows new development on one portion  
35 of the land, leaving the remainder in agricultural or open space  
36 uses;

37 (c) Large lot zoning, which establishes as a minimum lot size the  
38 amount of land necessary to achieve a successful farming practice;

1 (d) Quarter/quarter zoning, which permits one residential  
2 dwelling on a one-acre minimum lot for each one-sixteenth of a  
3 section of land; and

4 (e) Sliding scale zoning, which allows the number of lots for  
5 single-family residential purposes with a minimum lot size of one  
6 acre to increase inversely as the size of the total acreage  
7 increases.

8 (3) Accessory uses allowed under subsection (2)(a) of this  
9 section shall comply with the following:

10 (a) Accessory uses shall be located, designed, and operated so as  
11 to not interfere with, and to support the continuation of, the  
12 overall agricultural use of the property and neighboring properties,  
13 and shall comply with the requirements of this chapter;

14 (b) Accessory uses may include:

15 (i) Agricultural accessory uses and activities, including but not  
16 limited to the storage, distribution, and marketing of regional  
17 agricultural products from one or more producers, agriculturally  
18 related experiences, or the production, marketing, and distribution  
19 of value-added agricultural products, including support services that  
20 facilitate these activities; ~~((and))~~

21 (ii) Nonagricultural accessory uses and activities as long as  
22 they are consistent with the size, scale, and intensity of the  
23 existing agricultural use of the property and the existing buildings  
24 on the site. Nonagricultural accessory uses and activities, including  
25 new buildings, parking, or supportive uses, shall not be located  
26 outside the general area already developed for buildings and  
27 residential uses and shall not otherwise convert more than one acre  
28 of agricultural land to nonagricultural uses; and

29 (iii) Solar energy production facilities including agrivoltaic  
30 facilities, solar pivot corner facilities as described in RCW  
31 43.21F.100, and other facilities that place solar panels in  
32 agricultural lands of long-term commercial significance under RCW  
33 36.70A.170 in a manner that does not meet the description of  
34 agrivoltaic facilities or pivot corner facilities in RCW 43.21F.100,  
35 but that meets the standards established under (b)(i) or (ii) of this  
36 subsection; and

37 (c) Counties and cities have the authority to limit or exclude  
38 accessory uses otherwise authorized in this subsection (3) in areas  
39 designated as agricultural lands of long-term commercial  
40 significance.

1 (4) This section shall not be interpreted to limit agricultural  
2 production on designated agricultural lands.

3 **Sec. 3.** RCW 36.70A.060 and 2023 c 225 s 2 are each amended to  
4 read as follows:

5 (1)(a) Each county that is required or chooses to plan under RCW  
6 36.70A.040, and each city within such county, shall adopt development  
7 regulations on or before September 1, 1991, to assure the  
8 conservation of agricultural, forest, and mineral resource lands  
9 designated under RCW 36.70A.170. Regulations adopted under this  
10 subsection may not prohibit uses legally existing on any parcel prior  
11 to their adoption and shall remain in effect until the county or city  
12 adopts development regulations pursuant to RCW 36.70A.040. Such  
13 regulations shall assure that the use of lands adjacent to  
14 agricultural, forest, or mineral resource lands shall not interfere  
15 with the continued use, in the accustomed manner and in accordance  
16 with best management practices, of these designated lands for the  
17 production of food, agricultural products, or timber, or for the  
18 extraction of minerals. As of the effective date of this section,  
19 agrivoltaic facilities and pivot corner facilities, as described in  
20 RCW 43.21F.100, are determined to assure conservation of agricultural  
21 lands designated under RCW 36.70A.170 and not to interfere with the  
22 continued use, in the accustomed manner and in accordance with best  
23 management practices, of designated agricultural resource lands for  
24 the production of food and agricultural products. County regulations  
25 adopted under this section must be revised to be consistent with this  
26 determination on or before July 1, 2029. Any county located to the  
27 west of the crest of the Cascade mountains that has both a population  
28 of at least four hundred thousand and a border that touches another  
29 state, and any city in such county, may adopt development regulations  
30 to assure that agriculture, forest, and mineral resource lands  
31 adjacent to short line railroads may be developed for freight rail  
32 dependent uses.

33 (b) Counties and cities shall require that all plats, short  
34 plats, development permits, and building permits issued for  
35 development activities on, or within five hundred feet of, lands  
36 designated as agricultural lands, forestlands, or mineral resource  
37 lands, contain a notice that the subject property is within or near  
38 designated agricultural lands, forestlands, or mineral resource lands  
39 on which a variety of commercial activities may occur that are not

1 compatible with residential development for certain periods of  
2 limited duration. The notice for mineral resource lands shall also  
3 inform that an application might be made for mining-related  
4 activities, including mining, extraction, washing, crushing,  
5 stockpiling, blasting, transporting, and recycling of minerals.

6 (c) Each county that adopts a resolution of partial planning  
7 under RCW 36.70A.040(2)(b), and each city within such county, shall  
8 adopt development regulations within one year after the adoption of  
9 the resolution of partial planning to assure the conservation of  
10 agricultural, forest, and mineral resource lands designated under RCW  
11 36.70A.170. Regulations adopted under this subsection (1)(c) must  
12 comply with the requirements governing regulations adopted under (a)  
13 of this subsection.

14 (d)(i) A county that adopts a resolution of partial planning  
15 under RCW 36.70A.040(2)(b) and that is not in compliance with the  
16 planning requirements of this section, RCW 36.70A.040(4),  
17 36.70A.070(5), 36.70A.170, and 36.70A.172 at the time the resolution  
18 is adopted must, by January 30, 2017, apply for a determination of  
19 compliance from the department finding that the county's development  
20 regulations, including development regulations adopted to protect  
21 critical areas, and comprehensive plans are in compliance with the  
22 requirements of this section, RCW 36.70A.040(4), 36.70A.070(5),  
23 36.70A.170, and 36.70A.172. The department must approve or deny the  
24 application for a determination of compliance within one hundred  
25 twenty days of its receipt or by June 30, 2017, whichever date is  
26 earlier.

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

31 (iii) A petition for review of a determination of compliance  
32 under (d)(i) of this subsection may only be appealed to the growth  
33 management hearings board within 60 days of the issuance of the  
34 decision by the department.

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

1 (v) The department may implement this subsection (1)(d) by  
2 adopting rules related to determinations of compliance. The rules may  
3 address, but are not limited to: The requirements for applications  
4 for a determination of compliance; charging of costs under (d)(iv) of  
5 this subsection; procedures for processing applications; criteria for  
6 the evaluation of applications; issuance and notice of department  
7 decisions; and applicable timelines.

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

14 (2) Each county and city shall adopt development regulations that  
15 protect critical areas that are required to be designated under RCW  
16 36.70A.170. For counties and cities that are required or choose to  
17 plan under RCW 36.70A.040, such development regulations shall be  
18 adopted on or before September 1, 1991. For the remainder of the  
19 counties and cities, such development regulations shall be adopted on  
20 or before March 1, 1992.

21 (3) Such counties and cities shall review these designations and  
22 development regulations when adopting their comprehensive plans under  
23 RCW 36.70A.040 and implementing development regulations under RCW  
24 36.70A.120 and may alter such designations and development  
25 regulations to ensure consistency.

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

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

36 (c) A city that adopts the county's critical areas regulations by  
37 reference is not required to take legislative action to review and  
38 update development regulations protecting critical areas under RCW  
39 36.70A.130.

1 (d) If grant funding is available for a local jurisdiction's  
2 periodic comprehensive planning updates as required in RCW  
3 36.70A.070, and a city has adopted by reference the county's critical  
4 areas regulations as allowed in (a) through (c) of this subsection,  
5 the county in which the city is located shall be entitled to the  
6 portion of the city's grant funding that would otherwise have been  
7 utilized for updating the city's critical areas regulations. The  
8 department is authorized to determine what portion of the available  
9 grant funding the city would have received for the critical areas  
10 regulations update the county is entitled to receive.

11 (5) Forestland and agricultural land located within urban growth  
12 areas shall not be designated by a county or city as forestland or  
13 agricultural land of long-term commercial significance under RCW  
14 36.70A.170 unless the city or county has enacted a program  
15 authorizing transfer or purchase of development rights.

16 NEW SECTION. **Sec. 4.** If any provision of this act or its  
17 application to any person or circumstance is held invalid, the  
18 remainder of the act or the application of the provision to other  
19 persons or circumstances is not affected.

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