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HOUSE BILL 2905

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State of Washington

54th Legislature

1996 Regular Session

By Representatives Poulsen, Van Luven, Sheldon, Scheuerman, Mitchell, Regala, Dickerson, Valle and Linville

Read first time 01/24/96. Referred to Committee on Government Operations.

1 AN ACT Relating to open space protection; amending RCW 84.34.210,  
2 84.34.220, 36.96.010, and 84.52.052; and adding a new chapter to Title  
3 36 RCW.

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

5 **Sec. 1.** RCW 84.34.210 and 1993 c 248 s 1 are each amended to read  
6 as follows:

7 Any county, city, town, metropolitan park district, open space  
8 protection district, metropolitan municipal corporation, nonprofit  
9 historic preservation corporation as defined in RCW 64.04.130, or  
10 nonprofit nature conservancy corporation or association, as such are  
11 defined in RCW 84.34.250, may acquire by purchase, gift, grant,  
12 bequest, devise, lease, or otherwise, except by eminent domain, the fee  
13 simple or any lesser interest, development right, easement, covenant,  
14 or other contractual right necessary to protect, preserve, maintain,  
15 improve, restore, limit the future use of, or otherwise conserve,  
16 selected open space land, farm and agricultural land, and timber land  
17 as such are defined in chapter 84.34 RCW for public use or enjoyment.  
18 Among interests that may be so acquired are mineral rights. Any  
19 county, city, town, metropolitan park district, open space protection

1 district, metropolitan municipal corporation, nonprofit historic  
2 preservation corporation as defined in RCW 64.04.130, or nonprofit  
3 nature conservancy corporation or association, as such are defined in  
4 RCW 84.34.250, may acquire such property for the purpose of conveying  
5 or leasing the property back to its original owner or other person  
6 under such covenants or other contractual arrangements as will limit  
7 the future use of the property in accordance with the purposes of this  
8 1971 amendatory act.

9       **Sec. 2.** RCW 84.34.220 and 1993 c 248 s 2 are each amended to read  
10 as follows:

11       In accordance with the authority granted in RCW 84.34.210, a  
12 county, city, town, metropolitan park district, open space protection  
13 district, metropolitan municipal corporation, nonprofit historic  
14 preservation corporation as defined in RCW 64.04.130, or nonprofit  
15 nature conservancy corporation or association, as such are defined in  
16 RCW 84.34.250, may specifically purchase or otherwise acquire, except  
17 by eminent domain, rights in perpetuity to future development of any  
18 open space land, farm and agricultural land, and timber land which are  
19 so designated under the provisions of chapter 84.34 RCW and taxed at  
20 current use assessment as provided by that chapter. For the purposes  
21 of this 1971 amendatory act, such developmental rights shall be termed  
22 "conservation futures". The private owner may retain the right to  
23 continue any existing open space use of the land, and to develop any  
24 other open space use, but, under the terms of purchase of conservation  
25 futures, the county, city, town, metropolitan park district,  
26 metropolitan municipal corporation, nonprofit historic preservation  
27 corporation as defined in RCW 64.04.130, or nonprofit nature  
28 conservancy corporation or association, as such are defined in RCW  
29 84.34.250, may forbid or restrict building thereon, or may require that  
30 improvements cannot be made without county, city, town, metropolitan  
31 park district, metropolitan municipal corporation, nonprofit historic  
32 preservation corporation as defined in RCW 64.04.130, or nonprofit  
33 nature conservancy corporation or association, as such are defined in  
34 RCW 84.34.250, permission. The land may be alienated or sold and used  
35 as formerly by the new owner, subject to the terms of the agreement  
36 made by the county, city, town, metropolitan park district,  
37 metropolitan municipal corporation, nonprofit historic preservation  
38 corporation as defined in RCW 64.04.130, or nonprofit nature

1 conservancy corporation or association, as such are defined in RCW  
2 84.34.250, with the original owner.

3 NEW SECTION. **Sec. 3.** For the purposes of this chapter "district"  
4 means an open space protection district.

5 NEW SECTION. **Sec. 4.** Any county shall have the power to create an  
6 open space protection district for the purpose of purchasing,  
7 financing, acquiring, and maintaining development rights under RCW  
8 84.34.210, which shall be owned by the district. A district shall be  
9 a quasi-municipal corporation, an independent taxing "authority" within  
10 the meaning of section 1, Article 7 of the Constitution, and a "taxing  
11 district" within the meaning of section 2, Article 7 of the  
12 Constitution.

13 A district shall constitute a body corporate and shall possess all  
14 the usual powers of a corporation for public purposes including, but  
15 not limited to, the authority to hire employees, staff, and services,  
16 to enter into contracts, to accept and expend or use gifts, grants, and  
17 donations, and to sue and be sued as well as all other powers that may  
18 now or hereafter be specifically conferred by statute.

19 The members of the county legislative authority, acting ex officio  
20 and independently, shall compose the governing body of a district which  
21 is created within the county: PROVIDED, That where a district includes  
22 an incorporated city or town within the county, the district may be  
23 governed as provided in an interlocal agreement adopted pursuant to  
24 chapter 39.34 RCW. The voters of a district shall be all registered  
25 voters residing within the district.

26 A multicounty district shall be governed as provided in an  
27 interlocal agreement adopted pursuant to chapter 39.34 RCW.

28 NEW SECTION. **Sec. 5.** Districts may be initiated in any  
29 unincorporated area of any county by a petition signed by ten percent  
30 of the registered voters within the proposed district. Incorporated  
31 areas may be included under section 19 of this act.

32 NEW SECTION. **Sec. 6.** (1) Any petition initiating a proposed  
33 district shall set forth the boundaries of the district with certainty  
34 and describe the purpose or purposes for which the district is to be  
35 formed.

1 (2) Petitions shall be submitted to the county auditor who shall  
2 verify the signatures thereon to determine that the petition has been  
3 signed by the requisite number of persons who are registered voters  
4 within the proposed district. If the petition is found not to have the  
5 requisite number of signatures, it shall be returned to the  
6 petitioners. If the petition is found to be sufficient, the auditor  
7 shall so certify and transmit the same to the board of county  
8 commissioners.

9 NEW SECTION. **Sec. 7.** Upon accepting a petition to form a  
10 district, the county legislative authority shall order a full  
11 investigation for the purpose or purposes of the proposed district to  
12 determine the feasibility of forming the same and to determine the  
13 estimated initial costs involved in obtaining the objectives set forth  
14 in the petition or resolution. The reports on the feasibility and the  
15 cost of the proposed district shall be made available to the county  
16 legislative authority, and copies of such reports shall be filed with  
17 the clerk of the county legislative authority not more than eighty days  
18 after the county legislative authority first directs that the studies  
19 and reports be undertaken. The county legislative authority shall also  
20 provide by resolution that within twenty days after receiving the  
21 reports a public hearing shall be held at the county seat or at some  
22 convenient location within the proposed district. At least five days  
23 before the hearing, the county legislative authority shall give notice  
24 of the hearing not less than twice in a legal newspaper of general  
25 circulation in the county. The notice shall describe the boundaries of  
26 the proposed district, the purpose or purposes of the proposed  
27 district, the estimated initial costs, indicate that the reports and  
28 other materials prepared at the order of the county legislative  
29 authority are available in the office of the clerk of the county  
30 legislative authority for the study and review of any interested party,  
31 and set the time, date, and place of the hearing.

32 NEW SECTION. **Sec. 8.** At the hearing, the county legislative  
33 authority shall first provide for an explanation of the objectives of  
34 the proposed district and the estimated initial costs thereof. The  
35 county legislative authority shall permit any resident or property  
36 owner of the proposed district to appear and be heard, and may permit  
37 property owners in contiguous areas to include their property within

1 the proposed district in the event that they make their request for  
2 inclusion in writing. The county legislative authority shall examine  
3 all reports on the feasibility of the proposed district and its initial  
4 costs and may, if they deem it necessary, recess the hearing for not  
5 more than twenty days to obtain any additional information necessary to  
6 arrive at the findings provided for in section 9 of this act.

7 NEW SECTION. **Sec. 9.** At the conclusion of a hearing, the board of  
8 county commissioners shall make the following findings:

9 (1) Whether or not the district's objectives fit within the general  
10 framework of the county's comprehensive plan and general planning  
11 policies;

12 (2) The exact boundaries of the district: The board shall be  
13 empowered to modify the boundaries as originally defined in the  
14 petition initiating the proposed district: PROVIDED, That the  
15 boundaries of the district may not be enlarged unless the property  
16 owners within the area to be added consent to their inclusion in  
17 writing; or unless the board gives the property owners of the area to  
18 be added, written notice, mailed to their regular permanent residences  
19 as shown on the latest records of the county auditor, five days prior  
20 to a regular or continued hearing upon the formation of the proposed  
21 district;

22 (3) A full definition or explanation of the nature of development  
23 rights to be financed by the proposed district;

24 (4) Whether or not the objectives of the district are feasible;

25 (5) The number or name of the district.

26 If satisfactory findings cannot be made by the board, the petition  
27 shall be dismissed, and no petition embracing the same area may be  
28 accepted or heard for at least two years.

29 NEW SECTION. **Sec. 10.** (1) Upon making findings under the  
30 provisions of section 9 of this act, the county legislative authority  
31 shall, by resolution, order an election of the voters of the proposed  
32 district to determine if the district shall be formed. The county  
33 legislative authority shall in their resolution direct the county  
34 auditor to set the election to be held at the next general election or  
35 at a special election held for such purpose; describe the purposes of  
36 the proposed district; set forth the estimated cost of any initial  
37 expenses to be financed by the district should it be formed; describe

1 the method of financing the initial expenses described in the  
2 resolution or petition; and order that notice of election be published  
3 in a newspaper of general circulation in the county at least twice  
4 prior to the election date.

5 (2) A proposition to form a district shall be submitted to the  
6 voters of the proposed district. Upon approval by a majority of the  
7 voters voting on the proposition, a district shall be established. The  
8 proposition submitted to the voters by the county auditor on the ballot  
9 shall be in substantially the following form:

10 FORMATION OF OPEN SPACE  
11 PROTECTION DISTRICT

12 Shall an open space protection district be established for the area  
13 described in a resolution of the legislative authority of . . . . .  
14 county, adopted on the . . . . day of . . . . . 19. . . , to provide  
15 financing for acquisition of development rights?

16 Yes . . . . . No . . . . .

17 NEW SECTION. **Sec. 11.** If the petition initiating the formation of  
18 the proposed district proposes that the initial capital or operational  
19 costs are to be financed by regular property tax levies as authorized  
20 by section 16 of this act, or an annual excess levy, a proposition or  
21 propositions for such purpose or purposes shall be submitted to the  
22 voters of the proposed district at the same election. A proposition or  
23 propositions for regular property tax levies as authorized by section  
24 16 of this act, or an annual excess levy, may also be submitted to the  
25 voters at any general or special election.

26 NEW SECTION. **Sec. 12.** In order for the annual excess tax levy  
27 proposition to be approved, voters exceeding in number at least sixty  
28 percent of the number of voters who cast ballots for the office of  
29 county legislative authority within the district, or within the  
30 proposed district, in the last preceding general election for that  
31 office must cast ballots on the tax levy proposition, and of all the  
32 votes cast at the election at least sixty percent must approve the  
33 annual excess tax levy.

1        NEW SECTION.    **Sec. 13.**    If the formation of the district is  
2 approved by the voters, the county legislative authority shall by  
3 resolution declare the district to be formed and direct the county  
4 treasurer to be the treasurer of the district. Expenditures of the  
5 district shall be made upon warrants drawn by the county auditor  
6 pursuant to vouchers approved by the governing body of the district.

7        NEW SECTION.    **Sec. 14.**    If the district is formed, there shall be  
8 created in the office of the county treasurer a local open space  
9 protection district fund with such accounts as the treasurer may find  
10 convenient, or as the state auditor may direct, into which shall be  
11 deposited all revenues received by the district from tax levies or from  
12 gifts or donations. Such fund shall be designated "(name of county)  
13 open space protection district No. . . . fund."    Or "(name of  
14 district) fund."

15        NEW SECTION.    **Sec. 15.**    A district shall have the power to levy  
16 annual excess levies upon the property included within the district if  
17 authorized at a special election called for the purpose in the manner  
18 prescribed by section 2, Article VII of the Constitution and by RCW  
19 84.52.052 for operating funds, capital outlay funds, and cumulative  
20 reserve funds.

21        Any elections shall be held as provided in RCW 39.36.050.

22        NEW SECTION.    **Sec. 16.**    A district may impose regular property tax  
23 levies in an amount equal to twenty-five cents or less per thousand  
24 dollars of assessed value of property in the service area when  
25 specifically authorized so to do by a majority of at least three-fifths  
26 of the voters thereof approving a proposition authorizing the levies  
27 submitted not more than twelve months prior to the date on which the  
28 proposed initial levy is to be made and not more often than twice in  
29 such twelve-month period, either at a special election or at the  
30 regular election of the district, at which election the number of  
31 voters voting "yes" on the proposition shall constitute three-fifths of  
32 a number equal to forty percent of the number of voters voting in the  
33 district at the last preceding general election when the number of  
34 voters voting on the proposition does not exceed forty percent of the  
35 number of voters voting in such taxing district in the last preceding  
36 general election; or by a majority of at least three-fifths of the

1 voters thereof voting on the proposition if the number of voters voting  
2 on the proposition exceeds forty per centum of the number of voters  
3 voting in such taxing district in the last preceding general election.  
4 A proposition authorizing such tax levies shall not be submitted by a  
5 district more than twice in any twelve-month period. Ballot  
6 propositions shall conform with RCW 29.30.111. If a district is  
7 levying property taxes, which in combination with property taxes levied  
8 by other taxing districts result in taxes in excess of the nine-dollar  
9 and fifteen cents per thousand dollars of assessed valuation limitation  
10 provided for in RCW 84.52.043, the district property tax levy shall be  
11 reduced or eliminated before the property tax levies of other taxing  
12 districts are reduced.

13 NEW SECTION. **Sec. 17.** The governing body of each district shall  
14 annually compile a budget for each district in a form prescribed by the  
15 state auditor for the ensuing calendar year which shall, to the extent  
16 that anticipated income is actually realized, constitute the  
17 appropriations for the district. The budget may include an amount to  
18 accumulate a reserve for a stated capital purpose. In compiling the  
19 budget, all available funds and anticipated income shall be taken into  
20 consideration, including contributions or contractual payments from  
21 school districts, cities, or towns, county or any other governmental  
22 entity, gifts and donations, special tax levy, fees and charges, and  
23 cumulative reserve funds.

24 NEW SECTION. **Sec. 18.** A district may reimburse the county for any  
25 charge incurred by the county current expense fund which is properly an  
26 expense of the district, including reasonable administrative costs not  
27 to exceed two percent incurred by the offices of county treasurer and  
28 the county auditor in providing accounting, clerical, or other services  
29 for the benefit of the district. The county legislative authority may,  
30 where a county purchasing department has been established, provide for  
31 the purchase of all supplies and equipment for a district through the  
32 department. The district may contract with the county to administer  
33 purchasing.

34 NEW SECTION. **Sec. 19.** (1) A district may include any  
35 unincorporated area in the state, and when any part of the proposed  
36 district lies within the corporate limits of any city or town the

1 petition shall be accompanied by a certified copy of a resolution of  
2 the governing body of the city or town, approving inclusion of the  
3 district within the corporate limits of the city or town.

4 (2) After a district has been organized, an additional area may be  
5 added by the same procedure as is provided in this chapter for the  
6 organization of a district, and all voters within both the organized  
7 district and the proposed additional area shall vote upon the  
8 proposition for enlargement.

9 **Sec. 20.** RCW 36.96.010 and 1979 ex.s. c 5 s 1 are each amended to  
10 read as follows:

11 As used in this chapter, unless the context requires otherwise:

12 (1) "Special purpose district" means every municipal and quasi-  
13 municipal corporation other than counties, cities, and towns. Such  
14 special purpose districts shall include, but are not limited to, water  
15 districts, fire protection districts, port districts, public utility  
16 districts, county park and recreation service areas, open space  
17 protection districts, flood control zone districts, diking districts,  
18 drainage improvement districts, and solid waste collection districts,  
19 but shall not include industrial development districts created by port  
20 districts, and shall not include local improvement districts, utility  
21 local improvement districts, and road improvement districts;

22 (2) "Governing authority" means the commission, council, or other  
23 body which directs the affairs of a special purpose district;

24 (3) "Inactive" means that a special purpose district, other than a  
25 public utility district, is characterized by either of the following  
26 criteria:

27 (a) Has not carried out any of the special purposes or functions  
28 for which it was formed within the preceding consecutive five-year  
29 period; or

30 (b) No election has been held for the purpose of electing a member  
31 of the governing body within the preceding consecutive seven-year  
32 period or, in those instances where members of the governing body are  
33 appointed and not elected, where no member of the governing body has  
34 been appointed within the preceding seven-year period.

35 A public utility district is inactive when it is characterized by both  
36 criteria (a) and (b) of this subsection.

1       **Sec. 21.** RCW 84.52.052 and 1993 c 284 s 4 are each amended to read  
2 as follows:

3       The limitations imposed by RCW 84.52.050 through 84.52.056, and RCW  
4 84.52.043 shall not prevent the levy of additional taxes by any taxing  
5 district except school districts in which a larger levy is necessary in  
6 order to prevent the impairment of the obligation of contracts. As  
7 used in this section, the term "taxing district" means any county,  
8 metropolitan park district, park and recreation service area, open  
9 space protection district, park and recreation district, sewer  
10 district, water district, solid waste disposal district, public  
11 facilities district, flood control zone district, county rail district,  
12 service district, public hospital district, road district, rural county  
13 library district, island library district, rural partial-county library  
14 district, intercounty rural library district, fire protection district,  
15 cemetery district, city, town, transportation benefit district,  
16 emergency medical service district with a population density of less  
17 than one thousand per square mile, or cultural arts, stadium, and  
18 convention district.

19       Any such taxing district may levy taxes at a rate in excess of the  
20 rate specified in RCW 84.52.050 through 84.52.056 and 84.52.043, or  
21 84.55.010 through 84.55.050, when authorized so to do by the voters of  
22 such taxing district in the manner set forth in Article VII, section  
23 2(a) of the Constitution of this state, as amended by Amendment 64 and  
24 as thereafter amended, at a special or general election to be held in  
25 the year in which the levy is made.

26       A special election may be called and the time therefor fixed by the  
27 county legislative authority, or council, board of commissioners, or  
28 other governing body of any such taxing district, by giving notice  
29 thereof by publication in the manner provided by law for giving notices  
30 of general elections, at which special election the proposition  
31 authorizing such excess levy shall be submitted in such form as to  
32 enable the voters favoring the proposition to vote "yes" and those  
33 opposed thereto to vote "no."

34       NEW SECTION.   **Sec. 22.** Sections 3 through 19 of this act shall  
35 constitute a new chapter in Title 36 RCW.

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