
SUBSTITUTE HOUSE BILL 2911

State of Washington

55th Legislature

1998 Regular Session

By House Committee on House Government Reform & Land Use (originally sponsored by Representatives Reams, Cairnes and Thompson)

Read first time 02/05/98. Referred to Committee on .

1 AN ACT Relating to substantive authority and imposition of
2 mitigation measures under the state environmental policy act; amending
3 RCW 36.70B.030, 36.70B.040, 43.21C.060, 43.21C.065, 43.21C.240, and
4 82.02.100; adding a new section to chapter 43.21C RCW; and creating a
5 new section.

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

7 NEW SECTION. **Sec. 1.** The legislature recognizes that the growth
8 management act is the fundamental building block of regulatory reform.
9 The legislature also recognizes that state and local governments have
10 invested considerable resources in implementing chapter 36.70A RCW, the
11 growth management act. The legislature therefore declares the
12 following intent:

13 (1) Chapter 36.70A RCW, together with chapters 36.70B and 36.70C
14 RCW, serve as the integrating framework for all other land use laws.

15 (2) Policy decisions related to development impacts made by local
16 governments in plans, regulations, and codes adopted pursuant to
17 chapter 36.70A RCW are not to be reconsidered at the project review
18 level.

19 (3) Project-level environmental review should be used only to:

1 (a) Review and document consistency with comprehensive plans and
2 development regulations;

3 (b) Provide prompt and coordinated review by government agencies
4 and the public on compliance with applicable policies, development
5 regulations, and environmental laws and plans, including mitigation for
6 specific project impacts that have not already been considered and
7 addressed pursuant to chapter 36.70A RCW in a comprehensive plan,
8 subarea plan, or development regulation; and

9 (c) Ensure accountability by local governments to applicants and
10 the public for requiring and implementing mitigation measures.

11 (4) The authority for local governments to impose impact fees by
12 ordinance for infrastructure impacts provides the exclusive basis for
13 mitigating such impacts.

14 (5) All land use laws other than chapter 36.70A RCW serve only to
15 supplement the provisions of that chapter.

16 **Sec. 2.** RCW 36.70B.030 and 1995 c 347 s 404 are each amended to
17 read as follows:

18 (1) Fundamental land use planning choices made in adopted
19 comprehensive plans and development regulations shall serve as the
20 foundation for project review. The review of a proposed project's
21 consistency with applicable development regulations, or in the absence
22 of applicable regulations the adopted comprehensive plan, under RCW
23 36.70B.040 shall incorporate the determinations under this section.

24 (2) During project review, a local government or any subsequent
25 reviewing body shall determine whether the items listed in this
26 subsection are defined in the development regulations applicable to the
27 proposed project or, in the absence of applicable regulations the
28 adopted comprehensive plan. At a minimum, such applicable regulations
29 or plans shall be determinative of the:

30 (a) Type of land use permitted at the site, including uses that may
31 be allowed under certain circumstances, such as planned unit
32 developments and conditional and special uses, if the criteria for
33 their approval have been satisfied;

34 (b) Density of residential development in urban growth areas;
35 ((and))

36 (c) Availability and adequacy of public facilities identified in
37 the comprehensive plan, if the plan or development regulations provide
38 for funding of these facilities as required by chapter 36.70A RCW; and

1 (d) Protection of critical areas.

2 (3) During project review, the local government or any subsequent
3 reviewing body shall not reexamine alternatives to or hear appeals on
4 the items identified in subsection (2) of this section, except for
5 issues of code interpretation. As part of its project review process,
6 a local government shall provide a procedure for obtaining a code
7 interpretation as provided in RCW 36.70B.110.

8 ~~(4) ((Pursuant to RCW 43.21C.240, a local government may determine
9 that the requirements for environmental analysis and mitigation
10 measures in development regulations and other applicable laws provide
11 adequate mitigation for some or all of the project's specific adverse
12 environmental impacts to which the requirements apply.~~

13 ~~(5))~~ Nothing in this section limits the authority of a permitting
14 agency to approve, condition, or deny a project as provided in its
15 development regulations adopted under chapter 36.70A RCW ~~((and in its
16 policies adopted under RCW 43.21C.060. Project review shall be used to
17 identify specific project design and conditions relating to the
18 character of development, such as the details of site plans, curb cuts,
19 drainage swales, transportation demand management, the payment of
20 impact fees, or other measures to mitigate a proposal's probable
21 adverse environmental impacts, if applicable))~~.

22 ~~((6) Subsections (1) through (4) of))~~ (5) This section ((apply))
23 applies only to local governments planning under RCW 36.70A.040.

24 **Sec. 3.** RCW 36.70B.040 and 1997 c 429 s 46 are each amended to
25 read as follows:

26 (1) A proposed project's consistency with a local government's
27 development regulations adopted under chapter 36.70A RCW, or, in the
28 absence of applicable development regulations, the appropriate elements
29 of the comprehensive plan adopted under chapter 36.70A RCW shall be
30 decided by the local government during project review by consideration
31 of:

32 (a) The type of land use;

33 (b) The level of development, such as units per acre or other
34 measures of density;

35 (c) Infrastructure, including public facilities and services needed
36 to serve the development; ~~((and))~~

37 (d) The characteristics of the development, such as development
38 standards; and

1 (e) Protection of critical areas.

2 (2) In deciding whether a project is consistent, the determinations
3 made pursuant to RCW 36.70B.030(2) shall be controlling.

4 (3) For purposes of this section, the term "consistency" shall
5 include all terms used in this chapter and chapter 36.70A RCW to refer
6 to performance in accordance with this chapter and chapter 36.70A RCW,
7 including but not limited to compliance, conformity, and consistency.

8 (4) Nothing in this section requires documentation, dictates an
9 agency's procedures for considering consistency, or limits a city or
10 county from asking more specific or related questions with respect to
11 any of the four main categories listed in subsection (1)(a) through (d)
12 of this section.

13 (5) The department of community, trade, and economic development is
14 authorized to develop and adopt by rule criteria to assist local
15 governments planning under RCW 36.70A.040 to analyze the consistency of
16 project actions. These criteria shall be jointly developed with the
17 department of ecology.

18 NEW SECTION. Sec. 4. A new section is added to chapter 43.21C RCW
19 to read as follows:

20 A local government may only impose a condition pursuant to RCW
21 43.21C.060 for specific adverse environmental impacts of a project
22 action which are not deemed to be adequately analyzed and mitigated as
23 provided for in RCW 43.21C.240.

24 **Sec. 5.** RCW 43.21C.060 and 1983 c 117 s 3 are each amended to read
25 as follows:

26 (1) The policies and goals set forth in this chapter are
27 supplementary to those set forth in existing authorizations of all
28 branches of government of this state, including state agencies,
29 municipal and public corporations, and counties, and to the provisions
30 of chapters 36.70A, 36.70B, and 36.70C RCW.

31 (2) Any governmental action may be conditioned or denied pursuant
32 to this chapter if: ((PROVIDED, That such))

33 (a) The specific adverse environmental impact to which the
34 condition or denial applies has not already been addressed and
35 mitigated as provided in RCW 43.21C.065 and 43.21C.240;

1 (b) The conditions or denials authorized under this section shall
2 be based upon policies identified by the appropriate governmental
3 authority and incorporated into regulations, plans, or codes which are:

4 (i) In effect on the date a complete application is filed;

5 (ii) Consistent with the provisions of any comprehensive plan,
6 subarea plans, or development regulations adopted pursuant to chapter
7 36.70A RCW;

8 (iii) Formally designated by the agency (or appropriate legislative
9 body, in the case of local government) as possible bases for the
10 exercise of authority pursuant to this chapter~~((Such designation~~
11 ~~shall occur))~~ at the time specified by RCW 43.21C.120~~((Such))~~;

12 (c) The action ~~((may be))~~ is conditioned only to mitigate specific
13 adverse environmental impacts which are identified in the environmental
14 documents prepared under this chapter~~((These))~~ and the conditions
15 ~~((shall be))~~ are stated in writing by the decisionmaker~~((-))~~;

16 (d) Mitigation measures ~~((shall be))~~ are reasonable and capable of
17 being accomplished.

18 (3) In order to deny a proposal under this chapter, an agency must
19 find that:

20 ~~((1))~~ (a) The proposal would result in significant adverse
21 impacts identified in a final or supplemental environmental impact
22 statement prepared under this chapter; and

23 ~~((2))~~ (b) Reasonable mitigation measures are insufficient to
24 mitigate the identified impact.

25 (4) Except for permits and variances issued pursuant to chapter
26 90.58 RCW, when such a governmental action, not requiring a legislative
27 decision, is conditioned or denied by a nonelected official of a local
28 governmental agency, the decision shall be appealable to the
29 legislative authority of the acting local governmental agency unless
30 that legislative authority formally eliminates such appeals. Such
31 appeals shall be in accordance with procedures established for such
32 appeals by the legislative authority of the acting local governmental
33 agency.

34 **Sec. 6.** RCW 43.21C.065 and 1992 c 219 s 1 are each amended to read
35 as follows:

36 A person ~~((required to pay an impact fee for system improvements~~
37 ~~pursuant to RCW 82.02.050 through 82.02.090))~~ shall not be required to
38 prepare an environmental impact statement pursuant to RCW 43.21C.031 or

1 to pay a fee pursuant to RCW 43.21C.060 for ~~((these same))~~ system
2 improvements for which an impact fee may be imposed pursuant to RCW
3 82.02.050 through 82.02.090.

4 **Sec. 7.** RCW 43.21C.240 and 1995 c 347 s 202 are each amended to
5 read as follows:

6 (1) ~~((If the requirements of subsection (2) of this section are~~
7 ~~satisfied, a county, city, or town reviewing a project action may~~
8 ~~determine that))~~ For local governments planning under chapter 36.70A
9 RCW, the requirements for environmental analysis, protection, and
10 mitigation measures in the county, city, or town's development
11 regulations ~~((and)),~~ comprehensive plans, and subarea plans adopted
12 ~~((under))~~ pursuant to chapter 36.70A RCW~~(, and in other applicable~~
13 local, state, or federal laws and rules)) shall be deemed to provide
14 adequate analysis of and mitigation for the specific adverse
15 environmental impacts of the project action to which the requirements
16 apply. The county, city, or town shall not impose additional
17 mitigation under this chapter during project review to address any
18 specific adverse environmental impacts addressed in the regulations,
19 comprehensive plans, and subarea plans, adopted pursuant to chapter
20 36.70A RCW. Project review shall be integrated with environmental
21 analysis under this chapter.

22 (2) A county, city, or town not planning under chapter 36.70A RCW
23 may make the determination ~~((provided for in subsection (1) of this~~
24 section)) that its development regulations, comprehensive plan, or
25 subarea plans, or other applicable local, state, or federal laws and
26 rules provide adequate analysis of and mitigation for the specific
27 adverse environmental impacts of the project action to which the
28 requirements apply if:

29 (a) In the course of project review, including any required
30 environmental analysis, the local government considers the specific
31 probable adverse environmental impacts of the proposed action and
32 determines that these specific impacts are adequately addressed by the
33 development regulations or other applicable requirements of the
34 comprehensive plan, subarea plan element of the comprehensive plan, or
35 other local, state, or federal rules or laws; and

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

1 (3) If a county, city, or (~~town's comprehensive plans, subarea~~
2 ~~plans, and development regulations adequately address a project's~~
3 ~~probable specific adverse environmental impacts, as determined under~~
4 ~~subsections (1) and (2) of this section)) town makes the determination
5 provided for in subsection (2) of this section, the county, city, or
6 town shall not impose additional mitigation under this chapter during
7 project review to address any specific adverse environmental impacts
8 addressed in its regulations, comprehensive plans, and subarea plans.
9 Project review shall be integrated with environmental analysis under
10 this chapter.~~

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

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

17 (b) ~~The legislative body of the county, city, or town has~~
18 ~~designated as acceptable certain levels of service, land use~~
19 ~~designations, development standards, or other land use planning~~
20 ~~required or allowed by chapter 36.70A RCW)) Subsections (2) and (3) of
21 this section shall apply only to a county, city, or town not planning
22 under RCW 36.70A.040.~~

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

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

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

37 **Sec. 8.** RCW 82.02.100 and 1992 c 219 s 2 are each amended to read
38 as follows:

1 This chapter provides the exclusive basis for requiring mitigation
2 for system improvements specified in RCW 82.02.090. A person shall not
3 be required to pay a fee pursuant to RCW 43.21C.060 for any system
4 improvements ((shall not be required to pay an impact fee under RCW
5 82.02.050 through 82.02.090 for those same system improvements))
6 specified in RCW 82.02.090.

7 NEW SECTION. **Sec. 9.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

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