
SENATE BILL 5739

State of Washington

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By Senators Stevens, Schmidt, Swecker, Carrell, Schoesler and Oke

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1 AN ACT Relating to allowing agricultural lands that are not being
2 used for the commercial production of food or other agricultural
3 products to be used for recreational activities; amending RCW
4 36.70A.060, 36.70A.130, 36.70A.177, and 90.58.100; and declaring an
5 emergency.

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

7 **Sec. 1.** RCW 36.70A.060 and 1998 c 286 s 5 are each amended to read
8 as follows:

9 (1) Each county that is required or chooses to plan under RCW
10 36.70A.040, and each city within such county, shall adopt development
11 regulations on or before September 1, 1991, to assure the conservation
12 of agricultural, forest, and mineral resource lands designated under
13 RCW 36.70A.170. Regulations adopted under this subsection may not
14 prohibit uses legally existing on any parcel prior to their adoption
15 and shall remain in effect until the county or city adopts development
16 regulations pursuant to RCW 36.70A.040. Such regulations shall assure
17 that the use of lands adjacent to agricultural, forest, or mineral
18 resource lands shall not interfere with the continued use, in the
19 accustomed manner and in accordance with best management practices, of

1 these designated lands for the production of food, agricultural
2 products, or timber, or for the extraction of minerals. Counties and
3 cities shall require that all plats, short plats, development permits,
4 and building permits issued for development activities on, or within
5 five hundred feet of, lands designated as agricultural lands, forest
6 lands, or mineral resource lands, contain a notice that the subject
7 property is within or near designated agricultural lands, forest lands,
8 or mineral resource lands on which a variety of commercial activities
9 may occur that are not compatible with residential development for
10 certain periods of limited duration. The notice for mineral resource
11 lands shall also inform that an application might be made for mining-
12 related activities, including mining, extraction, washing, crushing,
13 stockpiling, blasting, transporting, and recycling of minerals.

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 regulations
25 to insure consistency.

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

31 (5)(a) Development regulations adopted under this section may
32 permit agricultural lands designated under RCW 36.70A.170 that are not
33 being used for the commercial production of food or other agricultural
34 products to be used for recreational activities, including, but not
35 limited to, playing fields for sports played on grass.

36 (b) Development regulations adopted under this subsection (5) shall
37 require an amendment to the comprehensive plan required by RCW
38 36.70A.070, may not permit permanent structures to be erected on the

1 agricultural land, and may not permit more than one percent of the
2 designated agricultural land within the jurisdiction as of January 1,
3 2005, to be used for recreational activities. The regulations may,
4 however, require the landowner to submit to the legislative authority
5 of the jurisdiction a plan providing for the resumption of the
6 commercial production of food or other agricultural products on the
7 land.

8 **Sec. 2.** RCW 36.70A.130 and 2002 c 320 s 1 are each amended to read
9 as follows:

10 (1)(a) Each comprehensive land use plan and development regulations
11 shall be subject to continuing review and evaluation by the county or
12 city that adopted them. A county or city shall take legislative action
13 to review and, if needed, revise its comprehensive land use plan and
14 development regulations to ensure the plan and regulations comply with
15 the requirements of this chapter according to the time periods
16 specified in subsection (4) of this section. A county or city not
17 planning under RCW 36.70A.040 shall take action to review and, if
18 needed, revise its policies and development regulations regarding
19 critical areas and natural resource lands adopted according to this
20 chapter to ensure these policies and regulations comply with the
21 requirements of this chapter according to the time periods specified in
22 subsection (4) of this section. Legislative action means the adoption
23 of a resolution or ordinance following notice and a public hearing
24 indicating at a minimum, a finding that a review and evaluation has
25 occurred and identifying the revisions made, or that a revision was not
26 needed and the reasons therefore. The review and evaluation required
27 by this subsection may be combined with the review required by
28 subsection (3) of this section. The review and evaluation required by
29 this subsection shall include, but is not limited to, consideration of
30 critical area ordinances and, if planning under RCW 36.70A.040, an
31 analysis of the population allocated to a city or county from the most
32 recent ten-year population forecast by the office of financial
33 management.

34 (b) Any amendment of or revision to a comprehensive land use plan
35 shall conform to this chapter. Any amendment of or revision to
36 development regulations shall be consistent with and implement the
37 comprehensive plan.

1 (2)(a) Each county and city shall establish and broadly disseminate
2 to the public a public participation program consistent with RCW
3 36.70A.035 and 36.70A.140 that identifies procedures and schedules
4 whereby updates, proposed amendments, or revisions of the comprehensive
5 plan are considered by the governing body of the county or city no more
6 frequently than once every year. "Updates" means to review and revise,
7 if needed, according to subsection (1) of this section, and the time
8 periods specified in subsection (4) of this section. Amendments may be
9 considered more frequently than once per year under the following
10 circumstances:

11 (i) The initial adoption of a subarea plan that does not modify the
12 comprehensive plan policies and designations applicable to the subarea;

13 (ii) The adoption or amendment of a shoreline master program under
14 the procedures set forth in chapter 90.58 RCW; (~~and~~)

15 (iii) The amendment of the capital facilities element of a
16 comprehensive plan that occurs concurrently with the adoption or
17 amendment of a county or city budget; and

18 (iv) The concurrent adoption or amendment of development
19 regulations authorized by RCW 36.70A.060(5).

20 (b) Except as otherwise provided in (a) of this subsection, all
21 proposals shall be considered by the governing body concurrently so the
22 cumulative effect of the various proposals can be ascertained.
23 However, after appropriate public participation a county or city may
24 adopt amendments or revisions to its comprehensive plan that conform
25 with this chapter whenever an emergency exists or to resolve an appeal
26 of a comprehensive plan filed with a growth management hearings board
27 or with the court.

28 (3) Each county that designates urban growth areas under RCW
29 36.70A.110 shall review, at least every ten years, its designated urban
30 growth area or areas, and the densities permitted within both the
31 incorporated and unincorporated portions of each urban growth area. In
32 conjunction with this review by the county, each city located within an
33 urban growth area shall review the densities permitted within its
34 boundaries, and the extent to which the urban growth occurring within
35 the county has located within each city and the unincorporated portions
36 of the urban growth areas. The county comprehensive plan designating
37 urban growth areas, and the densities permitted in the urban growth
38 areas by the comprehensive plans of the county and each city located

1 within the urban growth areas, shall be revised to accommodate the
2 urban growth projected to occur in the county for the succeeding
3 twenty-year period. The review required by this subsection may be
4 combined with the review and evaluation required by RCW 36.70A.215.

5 (4) The department shall establish a schedule for counties and
6 cities to take action to review and, if needed, revise their
7 comprehensive plans and development regulations to ensure the plan and
8 regulations comply with the requirements of this chapter. The schedule
9 established by the department shall provide for the reviews and
10 evaluations to be completed as follows:

11 (a) On or before December 1, 2004, and every seven years
12 thereafter, for Clallam, Clark, Jefferson, King, Kitsap, Pierce,
13 Snohomish, Thurston, and Whatcom counties and the cities within those
14 counties;

15 (b) On or before December 1, 2005, and every seven years
16 thereafter, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and
17 Skamania counties and the cities within those counties;

18 (c) On or before December 1, 2006, and every seven years
19 thereafter, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and
20 Yakima counties and the cities within those counties; and

21 (d) On or before December 1, 2007, and every seven years
22 thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield,
23 Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille,
24 Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities
25 within those counties.

26 (5)(a) Nothing in this section precludes a county or city from
27 conducting the review and evaluation required by this section before
28 the time limits established in subsection (4) of this section.
29 Counties and cities may begin this process early and may be eligible
30 for grants from the department, subject to available funding, if they
31 elect to do so.

32 (b) State agencies are encouraged to provide technical assistance
33 to the counties and cities in the review of critical area ordinances,
34 comprehensive plans, and development regulations.

35 (6) A county or city subject to the time periods in subsection
36 (4)(a) of this section that, pursuant to an ordinance adopted by the
37 county or city establishing a schedule for periodic review of its
38 comprehensive plan and development regulations, has conducted a review

1 and evaluation of its comprehensive plan and development regulations
2 and, on or after January 1, 2001, has taken action in response to that
3 review and evaluation shall be deemed to have conducted the first
4 review required by subsection (4)(a) of this section. Subsequent
5 review and evaluation by the county or city of its comprehensive plan
6 and development regulations shall be conducted in accordance with the
7 time periods established under subsection (4)(a) of this section.

8 (7) The requirements imposed on counties and cities under this
9 section shall be considered "requirements of this chapter" under the
10 terms of RCW 36.70A.040(1). Only those counties and cities in
11 compliance with the schedules in this section shall have the requisite
12 authority to receive grants, loans, pledges, or financial guarantees
13 from those accounts established in RCW 43.155.050 and 70.146.030. Only
14 those counties and cities in compliance with the schedules in this
15 section shall receive preference for grants or loans subject to the
16 provisions of RCW 43.17.250.

17 **Sec. 3.** RCW 36.70A.177 and 2004 c 207 s 1 are each amended to read
18 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. A county or city should encourage
24 nonagricultural uses to be limited to lands with poor soils or
25 otherwise not suitable for agricultural purposes.

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

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

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

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

1 (d) Quarter/quarter zoning, which permits one residential dwelling
2 on a one-acre minimum lot for each one-sixteenth of a section of land;
3 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 acre
6 to increase inversely as the size of the total acreage increases.

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

9 (i) Accessory uses shall be located, designed, and operated so as
10 not to interfere with natural resource land uses and shall be accessory
11 to the growing of crops or raising of animals;

12 (ii) Accessory commercial or retail uses shall predominately
13 produce, store, or sell regionally produced agricultural products from
14 one or more producers, products derived from regional agricultural
15 production, agriculturally related experiences, or products produced
16 on-site. Accessory commercial and retail uses shall offer for sale
17 predominantly products or services produced on-site; and

18 (iii) Accessory uses may operate out of existing or new buildings
19 with parking and other supportive uses consistent with the size and
20 scale of existing agricultural buildings on the site but shall not
21 otherwise convert agricultural land to nonagricultural uses.

22 (b) Accessory uses may include compatible commercial or retail uses
23 including, but not limited to:

24 (i) Storage and refrigeration of regional agricultural products;

25 (ii) Production, sales, and marketing of value-added agricultural
26 products derived from regional sources;

27 (iii) Supplemental sources of on-farm income that support and
28 sustain on-farm agricultural operations and production;

29 (iv) Support services that facilitate the production, marketing,
30 and distribution of agricultural products; and

31 (v) Off-farm and on-farm sales and marketing of predominately
32 regional agricultural products and experiences, locally made art and
33 arts and crafts, and ancillary retail sales or service activities.

34 (4) In accordance with the provisions of RCW 36.70A.060(5), a
35 county or city may permit agricultural lands designated under RCW
36 36.70A.170 that are not being used for the commercial production of
37 food or other agricultural products to be used for recreational

1 activities, including, but not limited to, playing fields for sports
2 played on grass.

3 **Sec. 4.** RCW 90.58.100 and 1997 c 369 s 7 are each amended to read
4 as follows:

5 (1) The master programs provided for in this chapter, when adopted
6 or approved by the department shall constitute use regulations for the
7 various shorelines of the state. In preparing the master programs, and
8 any amendments thereto, the department and local governments shall to
9 the extent feasible:

10 (a) Utilize a systematic interdisciplinary approach which will
11 insure the integrated use of the natural and social sciences and the
12 environmental design arts;

13 (b) Consult with and obtain the comments of any federal, state,
14 regional, or local agency having any special expertise with respect to
15 any environmental impact;

16 (c) Consider all plans, studies, surveys, inventories, and systems
17 of classification made or being made by federal, state, regional, or
18 local agencies, by private individuals, or by organizations dealing
19 with pertinent shorelines of the state;

20 (d) Conduct or support such further research, studies, surveys, and
21 interviews as are deemed necessary;

22 (e) Utilize all available information regarding hydrology,
23 geography, topography, ecology, economics, and other pertinent data;

24 (f) Employ, when feasible, all appropriate, modern scientific data
25 processing and computer techniques to store, index, analyze, and manage
26 the information gathered.

27 (2) The master programs shall include, when appropriate, the
28 following:

29 (a) An economic development element for the location and design of
30 industries, industrial projects of statewide significance,
31 transportation facilities, port facilities, tourist facilities,
32 commerce and other developments that are particularly dependent on
33 their location on or use of the shorelines of the state;

34 (b) A public access element making provision for public access to
35 publicly owned areas;

36 (c) A recreational element for the preservation and enlargement of

1 recreational opportunities, including but not limited to parks,
2 tidelands, beaches, and recreational areas;

3 (d) A circulation element consisting of the general location and
4 extent of existing and proposed major thoroughfares, transportation
5 routes, terminals, and other public utilities and facilities, all
6 correlated with the shoreline use element;

7 (e) A use element which considers the proposed general distribution
8 and general location and extent of the use on shorelines and adjacent
9 land areas for housing, business, industry, transportation,
10 agriculture, natural resources, recreation, education, public buildings
11 and grounds, and other categories of public and private uses of the
12 land;

13 (f) A conservation element for the preservation of natural
14 resources, including but not limited to scenic vistas, aesthetics, and
15 vital estuarine areas for fisheries and wildlife protection;

16 (g) An historic, cultural, scientific, and educational element for
17 the protection and restoration of buildings, sites, and areas having
18 historic, cultural, scientific, or educational values;

19 (h) An element that gives consideration to the statewide interest
20 in the prevention and minimization of flood damages; and

21 (i) Any other element deemed appropriate or necessary to effectuate
22 the policy of this chapter.

23 (3) The master programs shall include such map or maps, descriptive
24 text, diagrams and charts, or other descriptive material as are
25 necessary to provide for ease of understanding.

26 (4) Master programs will reflect that state-owned shorelines of the
27 state are particularly adapted to providing wilderness beaches,
28 ecological study areas, and other recreational activities for the
29 public and will give appropriate special consideration to same.

30 (5) Each master program shall contain provisions to allow for the
31 varying of the application of use regulations of the program, including
32 provisions for permits for conditional uses and variances, to insure
33 that strict implementation of a program will not create unnecessary
34 hardships or thwart the policy enumerated in RCW 90.58.020. Any such
35 varying shall be allowed only if extraordinary circumstances are shown
36 and the public interest suffers no substantial detrimental effect. The
37 concept of this subsection shall be incorporated in the rules adopted

1 by the department relating to the establishment of a permit system as
2 provided in RCW 90.58.140(3).

3 (6) Each master program shall contain standards governing the
4 protection of single family residences and appurtenant structures
5 against damage or loss due to shoreline erosion. The standards shall
6 govern the issuance of substantial development permits for shoreline
7 protection, including structural methods such as construction of
8 bulkheads, and nonstructural methods of protection. The standards
9 shall provide for methods which achieve effective and timely protection
10 against loss or damage to single family residences and appurtenant
11 structures due to shoreline erosion. The standards shall provide a
12 preference for permit issuance for measures to protect single family
13 residences occupied prior to January 1, 1992, where the proposed
14 measure is designed to minimize harm to the shoreline natural
15 environment.

16 (7)(a) Master programs may permit agricultural lands within
17 shorelines of the state that are not being used for the commercial
18 production of food or other agricultural products to be used for
19 recreational activities, including, but not limited to, playing fields
20 for sports played on grass.

21 (b) Master programs may not permit permanent structures to be
22 erected on the agricultural land and may not permit more than one
23 percent of the agricultural land within the jurisdiction within
24 shorelines of the state as of January 1, 2005, to be used for
25 recreational activities. Master programs may, however, require the
26 landowner to submit to the legislative authority of the jurisdiction a
27 plan providing for the resumption of the commercial production of food
28 or other agricultural products on the land.

29 (c) For the purposes of this subsection (7), "agricultural land"
30 shall have the same meaning as defined in RCW 90.58.065(2)(d).

31 NEW SECTION. Sec. 5. This act is necessary for the immediate
32 preservation of the public peace, health, or safety, or support of the
33 state government and its existing public institutions, and takes effect
34 immediately.

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