
SENATE BILL 6833

State of Washington

59th Legislature

2006 Regular Session

By Senators Mulliken and Rasmussen

Read first time 01/26/2006. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to the use of conservation easements; amending RCW
2 36.70A.060 and 36.70A.070; adding a new section to chapter 36.70A RCW;
3 and creating new sections.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that it is in the
6 best interest of the state to find innovative and economically
7 sustainable ways to conserve and protect wildlife habitat and other
8 natural resources.

9 (2) The legislature further finds that working natural resource and
10 wildlife habitat lands can be preserved through the creation of
11 conservation easements that reduce the amount of land available for
12 intensive development.

13 (3) The legislature recognizes the unique interests and knowledge
14 that private property owners have about their land and about the most
15 effective means available to protect the wildlife habitat and natural
16 resources on that land.

17 (4) The legislature intends to protect the use and value of private
18 property and the wildlife habitat and other natural resources on that

1 property by encouraging voluntary, cooperative environmental
2 enhancement and protection programs with willing property owners.

3 **Sec. 2.** RCW 36.70A.060 and 2005 c 423 s 3 are each amended to read
4 as follows:

5 (1)(a) Except as provided in RCW 36.70A.1701, each county that is
6 required or chooses to plan under RCW 36.70A.040, and each city within
7 such county, shall adopt development regulations on or before September
8 1, 1991, to assure the conservation of agricultural, forest, and
9 mineral resource lands designated under RCW 36.70A.170. Regulations
10 adopted under this subsection may not prohibit uses legally existing on
11 any parcel prior to their adoption and shall remain in effect until the
12 county or city adopts development regulations pursuant to RCW
13 36.70A.040. Such regulations shall assure that the use of lands
14 adjacent to agricultural, forest, or mineral resource lands shall not
15 interfere with the continued use, in the accustomed manner and in
16 accordance with best management practices, of these designated lands
17 for the production of food, agricultural products, or timber, or for
18 the extraction of minerals.

19 (b) Counties and cities shall require that all plats, short plats,
20 development permits, and building permits issued for development
21 activities on, or within five hundred feet of, lands designated as
22 agricultural lands, forest lands, or mineral resource lands, contain a
23 notice that the subject property is within or near designated
24 agricultural lands, forest lands, or mineral resource lands on which a
25 variety of commercial activities may occur that are not compatible with
26 residential development for certain periods of limited duration. The
27 notice for mineral resource lands shall also inform that an application
28 might be made for mining-related activities, including mining,
29 extraction, washing, crushing, stockpiling, blasting, transporting, and
30 recycling of minerals.

31 (2) Each county and city shall adopt development regulations that
32 protect critical areas that are required to be designated under RCW
33 36.70A.170. For counties and cities that are required or choose to
34 plan under RCW 36.70A.040, such development regulations shall be
35 adopted on or before September 1, 1991. For the remainder of the
36 counties and cities, such development regulations shall be adopted on
37 or before March 1, 1992.

1 (3) A county shall not adopt development regulations under this
2 chapter that directly or indirectly preclude a property owner from
3 being able to establish a conservation easement on a parcel or portion
4 of a parcel of land, enter into an agreement to sell or transfer the
5 development rights associated with a parcel or portion of a parcel of
6 land, or qualify for or enroll a parcel or a portion of a parcel of
7 land in any conservation reserve enhancement program or equivalent
8 program that protects the natural resources and habitat areas of that
9 parcel.

10 (4) Such counties and cities shall review these designations and
11 development regulations when adopting their comprehensive plans under
12 RCW 36.70A.040 and implementing development regulations under RCW
13 36.70A.120 and may alter such designations and development regulations
14 to insure consistency.

15 (~~(4)~~) (5) Forest land and agricultural land located within urban
16 growth areas shall not be designated by a county or city as forest land
17 or agricultural land of long-term commercial significance under RCW
18 36.70A.170 unless the city or county has enacted a program authorizing
19 transfer or purchase of development rights.

20 **Sec. 3.** RCW 36.70A.070 and 2005 c 360 s 2 are each amended to read
21 as follows:

22 The comprehensive plan of a county or city that is required or
23 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
24 and descriptive text covering objectives, principles, and standards
25 used to develop the comprehensive plan. The plan shall be an
26 internally consistent document and all elements shall be consistent
27 with the future land use map. A comprehensive plan shall be adopted
28 and amended with public participation as provided in RCW 36.70A.140.

29 Each comprehensive plan shall include a plan, scheme, or design for
30 each of the following:

31 (1) A land use element designating the proposed general
32 distribution and general location and extent of the uses of land, where
33 appropriate, for agriculture, timber production, housing, commerce,
34 industry, recreation, open spaces, general aviation airports, public
35 utilities, public facilities, and other land uses. The land use
36 element shall include population densities, building intensities, and
37 estimates of future population growth. The land use element shall

1 provide for protection of the quality and quantity of ground water used
2 for public water supplies. Wherever possible, the land use element
3 should consider utilizing urban planning approaches that promote
4 physical activity. Where applicable, the land use element shall review
5 drainage, flooding, and storm water run-off in the area and nearby
6 jurisdictions and provide guidance for corrective actions to mitigate
7 or cleanse those discharges that pollute waters of the state, including
8 Puget Sound or waters entering Puget Sound.

9 (2) A housing element ensuring the vitality and character of
10 established residential neighborhoods that: (a) Includes an inventory
11 and analysis of existing and projected housing needs that identifies
12 the number of housing units necessary to manage projected growth; (b)
13 includes a statement of goals, policies, objectives, and mandatory
14 provisions for the preservation, improvement, and development of
15 housing, including single-family residences; (c) identifies sufficient
16 land for housing, including, but not limited to, government-assisted
17 housing, housing for low-income families, manufactured housing,
18 multifamily housing, and group homes and foster care facilities; and
19 (d) makes adequate provisions for existing and projected needs of all
20 economic segments of the community.

21 (3) A capital facilities plan element consisting of: (a) An
22 inventory of existing capital facilities owned by public entities,
23 showing the locations and capacities of the capital facilities; (b) a
24 forecast of the future needs for such capital facilities; (c) the
25 proposed locations and capacities of expanded or new capital
26 facilities; (d) at least a six-year plan that will finance such capital
27 facilities within projected funding capacities and clearly identifies
28 sources of public money for such purposes; and (e) a requirement to
29 reassess the land use element if probable funding falls short of
30 meeting existing needs and to ensure that the land use element, capital
31 facilities plan element, and financing plan within the capital
32 facilities plan element are coordinated and consistent. Park and
33 recreation facilities shall be included in the capital facilities plan
34 element.

35 (4) A utilities element consisting of the general location,
36 proposed location, and capacity of all existing and proposed utilities,
37 including, but not limited to, electrical lines, telecommunication
38 lines, and natural gas lines.

1 (5) Rural element. Counties shall include a rural element
2 including lands that are not designated for urban growth, agriculture,
3 forest, or mineral resources. The following provisions shall apply to
4 the rural element:

5 (a) Growth management act goals and local circumstances. Because
6 circumstances vary from county to county, in establishing patterns of
7 rural densities and uses, a county may consider local circumstances,
8 but shall develop a written record explaining how the rural element
9 harmonizes the planning goals in RCW 36.70A.020 and meets the
10 requirements of this chapter.

11 (b) Rural development. The rural element shall permit rural
12 development, forestry, and agriculture in rural areas. The rural
13 element shall provide for a variety of rural densities, uses, essential
14 public facilities, and rural governmental services needed to serve the
15 permitted densities and uses. To achieve a variety of rural densities
16 and uses, counties may provide for clustering, density transfer, design
17 guidelines, conservation easements, and other innovative techniques
18 that will accommodate appropriate rural densities and uses that are not
19 characterized by urban growth and that are consistent with rural
20 character.

21 (c) Measures governing rural development. The rural element shall
22 include measures that apply to rural development and protect the rural
23 character of the area, as established by the county, by:

24 (i) Containing or otherwise controlling rural development;

25 (ii) Assuring visual compatibility of rural development with the
26 surrounding rural area;

27 (iii) Reducing the inappropriate conversion of undeveloped land
28 into sprawling, low-density development in the rural area;

29 (iv) Protecting critical areas, as provided in RCW 36.70A.060, and
30 surface water and ground water resources through (A) programs that
31 encourage the voluntary designation by property owners of land that is
32 available for purchase of conservation easements for the protection of
33 habitat and other natural resources; and (B) programs for the purchase
34 of conservation easements to parcels or portions of parcels of land by
35 the state, county, or other agencies of local government; and

36 (v) Protecting against conflicts with the use of agricultural,
37 forest, and mineral resource lands designated under RCW 36.70A.170.

1 (d) Limited areas of more intensive rural development. Subject to
2 the requirements of this subsection and except as otherwise
3 specifically provided in this subsection (5)(d), the rural element may
4 allow for limited areas of more intensive rural development, including
5 necessary public facilities and public services to serve the limited
6 area as follows:

7 (i) Rural development consisting of the infill, development, or
8 redevelopment of existing commercial, industrial, residential, or
9 mixed-use areas, whether characterized as shoreline development,
10 villages, hamlets, rural activity centers, or crossroads developments.

11 (A) A commercial, industrial, residential, shoreline, or mixed-use
12 area shall be subject to the requirements of (d)(iv) of this
13 subsection, but shall not be subject to the requirements of (c)(ii) and
14 (iii) of this subsection.

15 (B) Any development or redevelopment other than an industrial area
16 or an industrial use within a mixed-use area or an industrial area
17 under this subsection (5)(d)(i) must be principally designed to serve
18 the existing and projected rural population.

19 (C) Any development or redevelopment in terms of building size,
20 scale, use, or intensity shall be consistent with the character of the
21 existing areas. Development and redevelopment may include changes in
22 use from vacant land or a previously existing use so long as the new
23 use conforms to the requirements of this subsection (5);

24 (ii) The intensification of development on lots containing, or new
25 development of, small-scale recreational or tourist uses, including
26 commercial facilities to serve those recreational or tourist uses, that
27 rely on a rural location and setting, but that do not include new
28 residential development. A small-scale recreation or tourist use is
29 not required to be principally designed to serve the existing and
30 projected rural population. Public services and public facilities
31 shall be limited to those necessary to serve the recreation or tourist
32 use and shall be provided in a manner that does not permit low-density
33 sprawl;

34 (iii) The intensification of development on lots containing
35 isolated nonresidential uses or new development of isolated cottage
36 industries and isolated small-scale businesses that are not principally
37 designed to serve the existing and projected rural population and
38 nonresidential uses, but do provide job opportunities for rural

1 residents. Rural counties may allow the expansion of small-scale
2 businesses as long as those small-scale businesses conform with the
3 rural character of the area as defined by the local government
4 according to RCW 36.70A.030(~~((+14))~~) (15). Rural counties may also
5 allow new small-scale businesses to utilize a site previously occupied
6 by an existing business as long as the new small-scale business
7 conforms to the rural character of the area as defined by the local
8 government according to RCW 36.70A.030(~~((+14))~~) (15). Public services
9 and public facilities shall be limited to those necessary to serve the
10 isolated nonresidential use and shall be provided in a manner that does
11 not permit low-density sprawl;

12 (iv) A county shall adopt measures to minimize and contain the
13 existing areas or uses of more intensive rural development, as
14 appropriate, authorized under this subsection. Lands included in such
15 existing areas or uses shall not extend beyond the logical outer
16 boundary of the existing area or use, thereby allowing a new pattern of
17 low-density sprawl. Existing areas are those that are clearly
18 identifiable and contained and where there is a logical boundary
19 delineated predominately by the built environment, but that may also
20 include undeveloped lands if limited as provided in this subsection.
21 The county shall establish the logical outer boundary of an area of
22 more intensive rural development. In establishing the logical outer
23 boundary the county shall address (A) the need to preserve the
24 character of existing natural neighborhoods and communities, (B)
25 physical boundaries such as bodies of water, streets and highways, and
26 land forms and contours, (C) the prevention of abnormally irregular
27 boundaries, and (D) the ability to provide public facilities and public
28 services in a manner that does not permit low-density sprawl;

29 (v) For purposes of (d) of this subsection, an existing area or
30 existing use is one that was in existence:

31 (A) On July 1, 1990, in a county that was initially required to
32 plan under all of the provisions of this chapter;

33 (B) On the date the county adopted a resolution under RCW
34 36.70A.040(2), in a county that is planning under all of the provisions
35 of this chapter under RCW 36.70A.040(2); or

36 (C) On the date the office of financial management certifies the
37 county's population as provided in RCW 36.70A.040(5), in a county that

1 is planning under all of the provisions of this chapter pursuant to RCW
2 36.70A.040(5).

3 (e) Exception. This subsection shall not be interpreted to permit
4 in the rural area a major industrial development or a master planned
5 resort unless otherwise specifically permitted under RCW 36.70A.360 and
6 36.70A.365.

7 (6) A transportation element that implements, and is consistent
8 with, the land use element.

9 (a) The transportation element shall include the following
10 subelements:

11 (i) Land use assumptions used in estimating travel;

12 (ii) Estimated traffic impacts to state-owned transportation
13 facilities resulting from land use assumptions to assist the department
14 of transportation in monitoring the performance of state facilities, to
15 plan improvements for the facilities, and to assess the impact of land-
16 use decisions on state-owned transportation facilities;

17 (iii) Facilities and services needs, including:

18 (A) An inventory of air, water, and ground transportation
19 facilities and services, including transit alignments and general
20 aviation airport facilities, to define existing capital facilities and
21 travel levels as a basis for future planning. This inventory must
22 include state-owned transportation facilities within the city or
23 county's jurisdictional boundaries;

24 (B) Level of service standards for all locally owned arterials and
25 transit routes to serve as a gauge to judge performance of the system.
26 These standards should be regionally coordinated;

27 (C) For state-owned transportation facilities, level of service
28 standards for highways, as prescribed in chapters 47.06 and 47.80 RCW,
29 to gauge the performance of the system. The purposes of reflecting
30 level of service standards for state highways in the local
31 comprehensive plan are to monitor the performance of the system, to
32 evaluate improvement strategies, and to facilitate coordination between
33 the county's or city's six-year street, road, or transit program and
34 the department of transportation's six-year investment program. The
35 concurrency requirements of (b) of this subsection do not apply to
36 transportation facilities and services of statewide significance except
37 for counties consisting of islands whose only connection to the

1 mainland are state highways or ferry routes. In these island counties,
2 state highways and ferry route capacity must be a factor in meeting the
3 concurrency requirements in (b) of this subsection;

4 (D) Specific actions and requirements for bringing into compliance
5 locally owned transportation facilities or services that are below an
6 established level of service standard;

7 (E) Forecasts of traffic for at least ten years based on the
8 adopted land use plan to provide information on the location, timing,
9 and capacity needs of future growth;

10 (F) Identification of state and local system needs to meet current
11 and future demands. Identified needs on state-owned transportation
12 facilities must be consistent with the statewide multimodal
13 transportation plan required under chapter 47.06 RCW;

14 (iv) Finance, including:

15 (A) An analysis of funding capability to judge needs against
16 probable funding resources;

17 (B) A multiyear financing plan based on the needs identified in the
18 comprehensive plan, the appropriate parts of which shall serve as the
19 basis for the six-year street, road, or transit program required by RCW
20 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795
21 for public transportation systems. The multiyear financing plan should
22 be coordinated with the ((~~six-year~~)) ten-year improvement program
23 developed by the department of transportation as required by RCW
24 47.05.030;

25 (C) If probable funding falls short of meeting identified needs, a
26 discussion of how additional funding will be raised, or how land use
27 assumptions will be reassessed to ensure that level of service
28 standards will be met;

29 (v) Intergovernmental coordination efforts, including an assessment
30 of the impacts of the transportation plan and land use assumptions on
31 the transportation systems of adjacent jurisdictions;

32 (vi) Demand-management strategies;

33 (vii) Pedestrian and bicycle component to include collaborative
34 efforts to identify and designate planned improvements for pedestrian
35 and bicycle facilities and corridors that address and encourage
36 enhanced community access and promote healthy lifestyles.

37 (b) After adoption of the comprehensive plan by jurisdictions
38 required to plan or who choose to plan under RCW 36.70A.040, local

1 jurisdictions must adopt and enforce ordinances which prohibit
2 development approval if the development causes the level of service on
3 a locally owned transportation facility to decline below the standards
4 adopted in the transportation element of the comprehensive plan, unless
5 transportation improvements or strategies to accommodate the impacts of
6 development are made concurrent with the development. These strategies
7 may include increased public transportation service, ride sharing
8 programs, demand management, and other transportation systems
9 management strategies. For the purposes of this subsection (6)
10 "concurrent with the development" shall mean that improvements or
11 strategies are in place at the time of development, or that a financial
12 commitment is in place to complete the improvements or strategies
13 within six years.

14 (c) The transportation element described in this subsection (6),
15 and the six-year plans required by RCW 35.77.010 for cities, RCW
16 36.81.121 for counties, and RCW 35.58.2795 for public transportation
17 systems, and the ten-year plans required by RCW 47.05.030 for the
18 state, must be consistent.

19 (7) An economic development element establishing local goals,
20 policies, objectives, and provisions for economic growth and vitality
21 and a high quality of life. The element shall include: (a) A summary
22 of the local economy such as population, employment, payroll, sectors,
23 businesses, sales, and other information as appropriate; (b) a summary
24 of the strengths and weaknesses of the local economy defined as the
25 commercial and industrial sectors and supporting factors such as land
26 use, transportation, utilities, education, work force, housing, and
27 natural/cultural resources; and (c) an identification of policies,
28 programs, and projects to foster economic growth and development and to
29 address future needs. A city that has chosen to be a residential
30 community is exempt from the economic development element requirement
31 of this subsection.

32 (8) A park and recreation element that implements, and is
33 consistent with, the capital facilities plan element as it relates to
34 park and recreation facilities. The element shall include: (a)
35 Estimates of park and recreation demand for at least a ten-year period;
36 (b) an evaluation of facilities and service needs; and (c) an
37 evaluation of intergovernmental coordination opportunities to provide
38 regional approaches for meeting park and recreational demand.

1 (9) It is the intent that new or amended elements required after
2 January 1, 2002, be adopted concurrent with the scheduled update
3 provided in RCW 36.70A.130. Requirements to incorporate any such new
4 or amended elements shall be null and void until funds sufficient to
5 cover applicable local government costs are appropriated and
6 distributed by the state at least two years before local government
7 must update comprehensive plans as required in RCW 36.70A.130.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.70A RCW
9 to read as follows:

10 (1) Except as provided in subsection (2) of this section, for any
11 parcel or contiguously adjacent parcels owned by the same individual or
12 jointly by the same individuals where the owners have established a
13 conservation easement over or otherwise transferred the development
14 rights for more than fifty percent of that property, the county may not
15 prohibit by regulation or other action any use of that property that
16 was permitted at the time the conservation easement or other transfer
17 of development rights took place.

18 (2) This section does not prohibit the enforcement of public health
19 and safety laws or regulations to preserve or protect human life,
20 including fire and building codes; structural design or construction
21 requirements to prevent harm from earthquakes, flooding, or other
22 natural disasters; limitations on the operation of sex offender housing
23 or adult entertainment; requiring adherence to chemical use
24 restrictions adopted by the United States environmental protection
25 agency; worker health and safety laws or regulations; wage and hour
26 laws; dairy nutrient management restrictions in chapter 90.64 RCW; or
27 regulations or abatement orders necessary to prevent nuisances as
28 defined in RCW 7.48.010 or public nuisances as defined in RCW 9.66.010.

29 NEW SECTION. **Sec. 5.** The provisions of this act are to be
30 liberally construed to effectuate the intent, policies, and purposes of
31 this act.

32 NEW SECTION. **Sec. 6.** This act may not be construed to diminish,
33 modify, or replace any other remedy provided under the United States or

1 Washington state Constitutions, or federal or state law.

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