
HOUSE BILL 2538

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61st Legislature

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By Representatives Upthegrove, Taylor, Eddy, Pedersen, Clibborn, Chase, and Springer

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1 AN ACT Relating to high-density urban development; amending RCW
2 82.02.020; adding a new section to chapter 43.21C RCW; and creating a
3 new section.

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

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
6 encourage high-density, compact, in-fill development and redevelopment
7 within existing urban areas in order to further existing goals of
8 chapter 36.70A RCW, the growth management act, to promote the use of
9 public transit and encourage further investment in transit systems, and
10 to contribute to the reduction of greenhouse gas emissions by: (1)
11 Encouraging local governments to adopt plans and regulations that
12 authorize compact, high-density urban development as defined in section
13 2 of this act; (2) providing for the funding and preparation of
14 environmental impact statements that comprehensively examine the
15 impacts of such development at the time that the plans and regulations
16 are adopted; and (3) encouraging development that is consistent with
17 such plans and regulations by precluding appeals under chapter 43.21C
18 RCW.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.21C RCW
2 to read as follows:

3 (1) Counties identified in RCW 36.70A.215(7), and cities within
4 those counties with a population greater than five thousand, as well as
5 other counties and cities not identified in RCW 36.70A.215(7) and in
6 accordance with their existing comprehensive planning and development
7 regulation authority under chapter 36.70A RCW, and in accordance with
8 this section, may adopt optional elements of their comprehensive plans
9 and optional development regulations that apply within the cities or
10 within the urban growth areas of the cities, or within specified
11 subareas of such urban growth areas or cities, that:

12 (a) Provide for compact residential development and compact mixed-
13 use development with minimum residential densities that are at least
14 twenty-five percent higher than the average residential densities
15 approved and constructed within the same or similar zoning
16 classifications adopted by the county, city, or town to implement
17 chapter 36.70A RCW, the growth management act; and

18 (b) Are served by transit or that the city or county legislative
19 body finds are within a reasonable distance of transit service.

20 (2) A county, city, or town that elects to adopt such an optional
21 comprehensive plan element and optional development regulations shall
22 prepare a nonproject environmental impact statement, pursuant to RCW
23 43.21C.030, assessing and disclosing the probable significant adverse
24 environmental impacts of the optional comprehensive plan element and
25 development regulations and of future development that is consistent
26 with the plan and regulations.

27 (a) At least one community meeting must be held on the proposed
28 subarea plan either before notice of scoping is issued or in
29 combination with a meeting on scoping if one is held. Notice of
30 scoping, the community meeting, or notice of the combined community
31 meeting and scoping meeting for the nonproject environmental impact
32 statement must be mailed to all property owners of record within the
33 area or subarea to be studied for compact residential or mixed-use
34 development, and to all property owners within one hundred fifty feet
35 of the boundaries of the area or subarea.

36 (b) As an incentive for development authorized under this section,
37 a county, city, or town shall consider establishing a transfer of
38 development rights program that conserves county-designated

1 agricultural and forest land of long-term commercial significance. If
2 the county, city, or town decides not to establish a transfer of
3 development rights program, the county, city, or town must state in the
4 record the reasons for not adopting the program. The county, city, or
5 town's decision not to establish a transfer of development rights
6 program is not subject to appeal. Nothing in this subsection (2)(b)
7 may be used as a basis to challenge the optional comprehensive plan or
8 subarea plan policies authorized under this section.

9 (3) Proposed development that is consistent with the optional
10 comprehensive plan or subarea plan policies and development regulations
11 adopted under subsection (1) of this section and that is
12 environmentally reviewed under subsection (2) of this section may not
13 be challenged in administrative or judicial appeals for noncompliance
14 with this chapter as long as a complete application for such a
15 development is submitted to the county, city, or town within ten years
16 from the date of issue of the final environmental impact statement.

17 (4) It is recognized that a county, city, or town that prepares a
18 nonproject environmental impact statement under subsection (2) of this
19 section must endure a substantial financial burden. A county, city, or
20 town may recover its reasonable expenses of preparation of a nonproject
21 environmental impact statement prepared under subsection (2) of this
22 section through access to financial assistance under RCW 36.70A.490.
23 In addition, a county, city, or town is authorized to recover a portion
24 of its reasonable expenses of preparation of such a nonproject
25 environmental impact statement by the assessment of reasonable and
26 proportionate fees upon subsequent development that is consistent with
27 the plan and development regulations adopted under subsection (3) of
28 this section, as long as the development makes use of and benefits, as
29 described in subsection (3) of this section, from the nonproject
30 environmental impact statement prepared by the county, city, or town.
31 In order to collect such fees, the county, city, or town must enact an
32 ordinance that sets forth objective standards for determining how the
33 fees to be imposed upon each development will be proportionate to the
34 impacts of each development and to the benefits accruing to each
35 development from the nonproject environmental impact statement. Any
36 disagreement about the reasonableness or amount of the fees imposed
37 upon a development may not be the basis for delay in issuance of a
38 project permit for that development, and if the county, city, or town

1 provides for an administrative appeal of its decision on the project
2 for which the fees are imposed, any dispute about the amount of the
3 fees must be resolved in the same administrative appeal.

4 (5) This section applies only to a county, city, or town planning
5 under RCW 36.70A.040.

6 **Sec. 3.** RCW 82.02.020 and 2009 c 535 s 1103 are each amended to
7 read as follows:

8 Except only as expressly provided in chapters 67.28, 81.104, and
9 82.14 RCW, the state preempts the field of imposing retail sales and
10 use taxes and taxes upon parimutuel wagering authorized pursuant to RCW
11 67.16.060, conveyances, and cigarettes, and no county, town, or other
12 municipal subdivision shall have the right to impose taxes of that
13 nature. Except as provided in RCW 64.34.440 and 82.02.050 through
14 82.02.090, no county, city, town, or other municipal corporation shall
15 impose any tax, fee, or charge, either direct or indirect, on the
16 construction or reconstruction of residential buildings, commercial
17 buildings, industrial buildings, or on any other building or building
18 space or appurtenance thereto, or on the development, subdivision,
19 classification, or reclassification of land. However, this section
20 does not preclude dedications of land or easements within the proposed
21 development or plat which the county, city, town, or other municipal
22 corporation can demonstrate are reasonably necessary as a direct result
23 of the proposed development or plat to which the dedication of land or
24 easement is to apply.

25 This section does not prohibit voluntary agreements with counties,
26 cities, towns, or other municipal corporations that allow a payment in
27 lieu of a dedication of land or to mitigate a direct impact that has
28 been identified as a consequence of a proposed development,
29 subdivision, or plat. A local government shall not use such voluntary
30 agreements for local off-site transportation improvements within the
31 geographic boundaries of the area or areas covered by an adopted
32 transportation program authorized by chapter 39.92 RCW. Any such
33 voluntary agreement is subject to the following provisions:

34 (1) The payment shall be held in a reserve account and may only be
35 expended to fund a capital improvement agreed upon by the parties to
36 mitigate the identified, direct impact;

1 (2) The payment shall be expended in all cases within five years of
2 collection; and

3 (3) Any payment not so expended shall be refunded with interest to
4 be calculated from the original date the deposit was received by the
5 county and at the same rate applied to tax refunds pursuant to RCW
6 84.69.100; however, if the payment is not expended within five years
7 due to delay attributable to the developer, the payment shall be
8 refunded without interest.

9 No county, city, town, or other municipal corporation shall require
10 any payment as part of such a voluntary agreement which the county,
11 city, town, or other municipal corporation cannot establish is
12 reasonably necessary as a direct result of the proposed development or
13 plat.

14 Nothing in this section prohibits cities, towns, counties, or other
15 municipal corporations from collecting reasonable fees from an
16 applicant for a permit or other governmental approval to cover the cost
17 to the city, town, county, or other municipal corporation of processing
18 applications, inspecting and reviewing plans, or preparing detailed
19 statements required by chapter 43.21C RCW, including reasonable fees
20 that are consistent with section 2(4) of this act.

21 This section does not limit the existing authority of any county,
22 city, town, or other municipal corporation to impose special
23 assessments on property specifically benefitted thereby in the manner
24 prescribed by law.

25 Nothing in this section prohibits counties, cities, or towns from
26 imposing or permits counties, cities, or towns to impose water, sewer,
27 natural gas, drainage utility, and drainage system charges. However,
28 no such charge shall exceed the proportionate share of such utility or
29 system's capital costs which the county, city, or town can demonstrate
30 are attributable to the property being charged. Furthermore, these
31 provisions may not be interpreted to expand or contract any existing
32 authority of counties, cities, or towns to impose such charges.

33 Nothing in this section prohibits a transportation benefit district
34 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
35 the legislative authority of a county, city, or town from approving the
36 imposition of such fees within a transportation benefit district.

37 Nothing in this section prohibits counties, cities, or towns from

1 imposing transportation impact fees authorized pursuant to chapter
2 39.92 RCW.

3 Nothing in this section prohibits counties, cities, or towns from
4 requiring property owners to provide relocation assistance to tenants
5 under RCW 59.18.440 and 59.18.450.

6 Nothing in this section limits the authority of counties, cities,
7 or towns to implement programs consistent with RCW 36.70A.540, nor to
8 enforce agreements made pursuant to such programs.

9 This section does not apply to special purpose districts formed and
10 acting pursuant to Title 54, 57, or 87 RCW, nor is the authority
11 conferred by these titles affected.

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