
SENATE BILL 5612

State of Washington

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By Senators Schoesler and Becker

Read first time 02/05/13. Referred to Committee on Governmental Operations.

1 AN ACT Relating to designating facilities and infrastructure of
2 water purveyors as essential public facilities under growth management
3 planning requirements; and amending RCW 36.70A.030 and 36.70A.200.

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

5 **Sec. 1.** RCW 36.70A.030 and 2012 c 21 s 1 are each amended to read
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Adopt a comprehensive land use plan" means to enact a new
10 comprehensive land use plan or to update an existing comprehensive land
11 use plan.

12 (2) "Agricultural land" means land primarily devoted to the
13 commercial production of horticultural, viticultural, floricultural,
14 dairy, apiary, vegetable, or animal products or of berries, grain, hay,
15 straw, turf, seed, Christmas trees not subject to the excise tax
16 imposed by RCW 84.33.100 through 84.33.140, finfish in upland
17 hatcheries, or livestock, and that has long-term commercial
18 significance for agricultural production.

19 (3) "City" means any city or town, including a code city.

1 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
2 means a generalized coordinated land use policy statement of the
3 governing body of a county or city that is adopted pursuant to this
4 chapter.

5 (5) "Critical areas" include the following areas and ecosystems:
6 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
7 used for potable water; (c) fish and wildlife habitat conservation
8 areas; (d) frequently flooded areas; and (e) geologically hazardous
9 areas. "Fish and wildlife habitat conservation areas" does not include
10 such artificial features or constructs as irrigation delivery systems,
11 irrigation infrastructure, irrigation canals, or drainage ditches that
12 lie within the boundaries of and are maintained by a port district or
13 an irrigation district or company.

14 (6) "Department" means the department of commerce.

15 (7) "Development regulations" or "regulation" means the controls
16 placed on development or land use activities by a county or city,
17 including, but not limited to, zoning ordinances, critical areas
18 ordinances, shoreline master programs, official controls, planned unit
19 development ordinances, subdivision ordinances, and binding site plan
20 ordinances together with any amendments thereto. A development
21 regulation does not include a decision to approve a project permit
22 application, as defined in RCW 36.70B.020, even though the decision may
23 be expressed in a resolution or ordinance of the legislative body of
24 the county or city.

25 (8) "Forest land" means land primarily devoted to growing trees for
26 long-term commercial timber production on land that can be economically
27 and practically managed for such production, including Christmas trees
28 subject to the excise tax imposed under RCW 84.33.100 through
29 84.33.140, and that has long-term commercial significance. In
30 determining whether forest land is primarily devoted to growing trees
31 for long-term commercial timber production on land that can be
32 economically and practically managed for such production, the following
33 factors shall be considered: (a) The proximity of the land to urban,
34 suburban, and rural settlements; (b) surrounding parcel size and the
35 compatibility and intensity of adjacent and nearby land uses; (c) long-
36 term local economic conditions that affect the ability to manage for
37 timber production; and (d) the availability of public facilities and
38 services conducive to conversion of forest land to other uses.

1 (9) "Geologically hazardous areas" means areas that because of
2 their susceptibility to erosion, sliding, earthquake, or other
3 geological events, are not suited to the siting of commercial,
4 residential, or industrial development consistent with public health or
5 safety concerns.

6 (10) "Long-term commercial significance" includes the growing
7 capacity, productivity, and soil composition of the land for long-term
8 commercial production, in consideration with the land's proximity to
9 population areas, and the possibility of more intense uses of the land.

10 (11) "Minerals" include gravel, sand, and valuable metallic
11 substances.

12 (12) "Public facilities" include streets, roads, highways,
13 sidewalks, street and road lighting systems, traffic signals, domestic
14 water systems, storm and sanitary sewer systems, parks and recreational
15 facilities, and schools.

16 (13) "Public services" include fire protection and suppression, law
17 enforcement, public health, education, recreation, environmental
18 protection, and other governmental services.

19 (14) "Recreational land" means land so designated under RCW
20 36.70A.1701 and that, immediately prior to this designation, was
21 designated as agricultural land of long-term commercial significance
22 under RCW 36.70A.170. Recreational land must have playing fields and
23 supporting facilities existing before July 1, 2004, for sports played
24 on grass playing fields.

25 (15) "Rural character" refers to the patterns of land use and
26 development established by a county in the rural element of its
27 comprehensive plan:

28 (a) In which open space, the natural landscape, and vegetation
29 predominate over the built environment;

30 (b) That foster traditional rural lifestyles, rural-based
31 economies, and opportunities to both live and work in rural areas;

32 (c) That provide visual landscapes that are traditionally found in
33 rural areas and communities;

34 (d) That are compatible with the use of the land by wildlife and
35 for fish and wildlife habitat;

36 (e) That reduce the inappropriate conversion of undeveloped land
37 into sprawling, low-density development;

1 (f) That generally do not require the extension of urban
2 governmental services; and

3 (g) That are consistent with the protection of natural surface
4 water flows and groundwater and surface water recharge and discharge
5 areas.

6 (16) "Rural development" refers to development outside the urban
7 growth area and outside agricultural, forest, and mineral resource
8 lands designated pursuant to RCW 36.70A.170. Rural development can
9 consist of a variety of uses and residential densities, including
10 clustered residential development, at levels that are consistent with
11 the preservation of rural character and the requirements of the rural
12 element. Rural development does not refer to agriculture or forestry
13 activities that may be conducted in rural areas.

14 (17) "Rural governmental services" or "rural services" include
15 those public services and public facilities historically and typically
16 delivered at an intensity usually found in rural areas, and may include
17 domestic water systems, fire and police protection services,
18 transportation and public transit services, and other public utilities
19 associated with rural development and normally not associated with
20 urban areas. Rural services do not include storm or sanitary sewers,
21 except as otherwise authorized by RCW 36.70A.110(4).

22 (18) "Urban governmental services" or "urban services" include
23 those public services and public facilities at an intensity
24 historically and typically provided in cities, specifically including
25 storm and sanitary sewer systems, domestic water systems, street
26 cleaning services, fire and police protection services, public transit
27 services, and other public utilities associated with urban areas and
28 normally not associated with rural areas.

29 (19) "Urban growth" refers to growth that makes intensive use of
30 land for the location of buildings, structures, and impermeable
31 surfaces to such a degree as to be incompatible with the primary use of
32 land for the production of food, other agricultural products, or fiber,
33 or the extraction of mineral resources, rural uses, rural development,
34 and natural resource lands designated pursuant to RCW 36.70A.170. A
35 pattern of more intensive rural development, as provided in RCW
36 36.70A.070(5)(d), is not urban growth. When allowed to spread over
37 wide areas, urban growth typically requires urban governmental

1 services. "Characterized by urban growth" refers to land having urban
2 growth located on it, or to land located in relationship to an area
3 with urban growth on it as to be appropriate for urban growth.

4 (20) "Urban growth areas" means those areas designated by a county
5 pursuant to RCW 36.70A.110.

6 (21) "Water purveyor" has the same meaning as "purveyor" in RCW
7 70.116.030(4).

8 (22) "Wetland" or "wetlands" means areas that are inundated or
9 saturated by surface water or groundwater at a frequency and duration
10 sufficient to support, and that under normal circumstances do support,
11 a prevalence of vegetation typically adapted for life in saturated soil
12 conditions. Wetlands generally include swamps, marshes, bogs, and
13 similar areas. Wetlands do not include those artificial wetlands
14 intentionally created from nonwetland sites, including, but not limited
15 to, irrigation and drainage ditches, grass-lined swales, canals,
16 detention facilities, wastewater treatment facilities, farm ponds, and
17 landscape amenities, or those wetlands created after July 1, 1990, that
18 were unintentionally created as a result of the construction of a road,
19 street, or highway. Wetlands may include those artificial wetlands
20 intentionally created from nonwetland areas created to mitigate
21 conversion of wetlands.

22 **Sec. 2.** RCW 36.70A.200 and 2011 c 60 s 17 are each amended to read
23 as follows:

24 (1) The comprehensive plan of each county and city that is planning
25 under RCW 36.70A.040 shall include a process for identifying and siting
26 essential public facilities. Essential public facilities include those
27 facilities that are typically difficult to site, such as airports,
28 state education facilities and state or regional transportation
29 facilities as defined in RCW 47.06.140, regional transit authority
30 facilities as defined in RCW 81.112.020, state and local correctional
31 facilities, solid waste handling facilities, facilities and
32 infrastructure of water purveyors, and inpatient facilities including
33 substance abuse facilities, mental health facilities, group homes, and
34 secure community transition facilities as defined in RCW 71.09.020.

35 (2) Each county and city planning under RCW 36.70A.040 shall, not
36 later than September 1, 2002, establish a process, or amend its
37 existing process, for identifying and siting essential public

1 facilities and adopt or amend its development regulations as necessary
2 to provide for the siting of secure community transition facilities
3 consistent with statutory requirements applicable to these facilities.

4 (3) Any city or county not planning under RCW 36.70A.040 shall, not
5 later than September 1, 2002, establish a process for siting secure
6 community transition facilities and adopt or amend its development
7 regulations as necessary to provide for the siting of such facilities
8 consistent with statutory requirements applicable to these facilities.

9 (4) The office of financial management shall maintain a list of
10 those essential state public facilities that are required or likely to
11 be built within the next six years. The office of financial management
12 may at any time add facilities to the list.

13 (5) No local comprehensive plan or development regulation may
14 preclude the siting of essential public facilities.

15 (6) No person may bring a cause of action for civil damages based
16 on the good faith actions of any county or city to provide for the
17 siting of secure community transition facilities in accordance with
18 this section and with the requirements of chapter 12, Laws of 2001 2nd
19 sp. sess. For purposes of this subsection, "person" includes, but is
20 not limited to, any individual, agency as defined in RCW 42.17A.005,
21 corporation, partnership, association, and limited liability entity.

22 (7) Counties or cities siting facilities pursuant to subsection (2)
23 or (3) of this section shall comply with RCW 71.09.341.

24 (8) The failure of a county or city to act by the deadlines
25 established in subsections (2) and (3) of this section is not:

26 (a) A condition that would disqualify the county or city for
27 grants, loans, or pledges under RCW 43.155.070 or 70.146.070;

28 (b) A consideration for grants or loans provided under RCW
29 43.17.250(2); or

30 (c) A basis for any petition under RCW 36.70A.280 or for any
31 private cause of action.

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