

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5374

68th Legislature
2023 Regular Session

Passed by the Senate March 1, 2023
Yeas 46 Nays 0

President of the Senate

Passed by the House April 11, 2023
Yeas 97 Nays 0

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5374** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5374

Passed Legislature - 2023 Regular Session

State of Washington

68th Legislature

2023 Regular Session

By Senate Local Government, Land Use & Tribal Affairs (originally sponsored by Senators Short, Lovelett, Shewmake, and Torres)

READ FIRST TIME 01/27/23.

1 AN ACT Relating to the adoption of county critical area
2 ordinances by cities; amending RCW 36.70A.060; and creating a new
3 section.

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

5 NEW SECTION. **Sec. 1.** The growth management act has been in
6 place for over 30 years. As time has passed, the legislature has
7 found that the act needs to be adjusted to accommodate difficulties
8 that have been encountered over time. The legislature finds that
9 small cities should be able to adopt the critical areas ordinances of
10 the counties pursuant to the advice of the work group engaged to make
11 such positive changes to the act.

12 **Sec. 2.** RCW 36.70A.060 and 2017 3rd sp.s. c 18 s 3 are each
13 amended to read as follows:

14 (1)(a) Each county that is required or chooses to plan under RCW
15 36.70A.040, and each city within such county, shall adopt development
16 regulations on or before September 1, 1991, to assure the
17 conservation of agricultural, forest, and mineral resource lands
18 designated under RCW 36.70A.170. Regulations adopted under this
19 subsection may not prohibit uses legally existing on any parcel prior
20 to their adoption and shall remain in effect until the county or city

1 adopts development regulations pursuant to RCW 36.70A.040. Such
2 regulations shall assure that the use of lands adjacent to
3 agricultural, forest, or mineral resource lands shall not interfere
4 with the continued use, in the accustomed manner and in accordance
5 with best management practices, of these designated lands for the
6 production of food, agricultural products, or timber, or for the
7 extraction of minerals. Any county located to the west of the crest
8 of the Cascade mountains that has both a population of at least four
9 hundred thousand and a border that touches another state, and any
10 city in such county, may adopt development regulations to assure that
11 agriculture, forest, and mineral resource lands adjacent to short
12 line railroads may be developed for freight rail dependent uses.

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

25 (c) Each county that adopts a resolution of partial planning
26 under RCW 36.70A.040(2)(b), and each city within such county, shall
27 adopt development regulations within one year after the adoption of
28 the resolution of partial planning to assure the conservation of
29 agricultural, forest, and mineral resource lands designated under RCW
30 36.70A.170. Regulations adopted under this subsection (1)(c) must
31 comply with the requirements governing regulations adopted under (a)
32 of this subsection.

33 (d)(i) A county that adopts a resolution of partial planning
34 under RCW 36.70A.040(2)(b) and that is not in compliance with the
35 planning requirements of this section, RCW 36.70A.040(4),
36 36.70A.070(5), 36.70A.170, and 36.70A.172 at the time the resolution
37 is adopted must, by January 30, 2017, apply for a determination of
38 compliance from the department finding that the county's development
39 regulations, including development regulations adopted to protect
40 critical areas, and comprehensive plans are in compliance with the

1 requirements of this section, RCW 36.70A.040(4), 36.70A.070(5),
2 36.70A.170, and 36.70A.172. The department must approve or deny the
3 application for a determination of compliance within one hundred
4 twenty days of its receipt or by June 30, 2017, whichever date is
5 earlier.

6 (ii) If the department denies an application under (d)(i) of this
7 subsection, the county and each city within is obligated to comply
8 with all requirements of this chapter and the resolution for partial
9 planning adopted under RCW 36.70A.040(2)(b) is no longer in effect.

10 (iii) A petition for review of a determination of compliance
11 under (d)(i) of this subsection may only be appealed to the growth
12 management hearings board within (~~sixty~~) 60 days of the issuance of
13 the decision by the department.

14 (iv) In the event of a filing of a petition in accordance with
15 (d)(iii) of this subsection, the county and the department must
16 equally share the costs incurred by the department for defending an
17 approval of determination of compliance that is before the growth
18 management hearings board.

19 (v) The department may implement this subsection (1)(d) by
20 adopting rules related to determinations of compliance. The rules may
21 address, but are not limited to: The requirements for applications
22 for a determination of compliance; charging of costs under (d)(iv) of
23 this subsection; procedures for processing applications; criteria for
24 the evaluation of applications; issuance and notice of department
25 decisions; and applicable timelines.

26 (e) Any county that borders both the Cascade mountains and
27 another country and has a population of less than fifty thousand
28 people, and any city in such county, may adopt development
29 regulations to assure that agriculture, forest, and mineral resource
30 lands adjacent to short line railroads may be developed for freight
31 rail dependent uses.

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

39 (3) Such counties and cities shall review these designations and
40 development regulations when adopting their comprehensive plans under

1 RCW 36.70A.040 and implementing development regulations under RCW
2 36.70A.120 and may alter such designations and development
3 regulations to (~~insure~~) ensure consistency.

4 (4)(a) A city with a population fewer than 25,000 may adopt the
5 county's critical areas regulations by reference to satisfy the
6 requirements under this section to designate and protect critical
7 areas; provided, that the county's critical areas regulations are not
8 subject to any outstanding administrative or judicial appeals at the
9 time of the city's adoption. Nothing in this subsection prohibits a
10 city from adopting its own critical areas regulations.

11 (b) The city legislative action adopting the county regulations
12 by reference must incorporate future amendments to the critical areas
13 policies and development regulations of the county.

14 (c) A city that adopts the county's critical areas regulations by
15 reference is not required to take legislative action to review and
16 update development regulations protecting critical areas under RCW
17 36.70A.130.

18 (d) If grant funding is available for a local jurisdiction's
19 periodic comprehensive planning updates as required in RCW
20 36.70A.070, and a city has adopted by reference the county's critical
21 areas regulations as allowed in (a) through (c) of this subsection,
22 the county in which the city is located shall be entitled to the
23 portion of the city's grant funding that would otherwise have been
24 utilized for updating the city's critical areas regulations. The
25 department is authorized to determine what portion of the available
26 grant funding the city would have received for the critical areas
27 regulations update the county is entitled to receive.

28 (5) Forestland and agricultural land located within urban growth
29 areas shall not be designated by a county or city as forestland or
30 agricultural land of long-term commercial significance under RCW
31 36.70A.170 unless the city or county has enacted a program
32 authorizing transfer or purchase of development rights.

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