
SUBSTITUTE SENATE BILL 5449

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Government Operations & Elections (originally sponsored by Senators Swecker, Rockefeller, Jacobsen, Kastama, Clements, Pflug, Haugen, Benton and Rasmussen)

READ FIRST TIME 02/26/07.

1 AN ACT Relating to authorizing voluntary environmental management
2 and incentive zone plans for subareas; amending RCW 36.70A.060; adding
3 a new section to chapter 36.70A RCW; creating a new section; and making
4 an appropriation.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that there is a
7 broadly held ethic among the citizens of the state that includes
8 appreciation of nature and environmental values, and that many citizens
9 are willing to voluntarily undertake activities to protect and enhance
10 environmental values on their own land and in their communities.

11 (2) The purposes of this act are to: Promote nonregulatory
12 measures, incentives, and educational programs; reduce conflict between
13 agencies, local governments, and stakeholders; alleviate adverse
14 consequences of prescriptive rules; and protect both property rights
15 and values and critical area functions and values.

16 (3) The legislature therefore intends that counties and cities
17 utilize voluntary solutions as a planning priority where they would be
18 effective in substantially meeting the goals and requirements of the

1 growth management act, and provide ample opportunities for citizens to
2 understand and pursue voluntary options to improve their own
3 environment.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 36.70A RCW
5 to read as follows:

6 (1) Cities and counties may:

7 (a) Initiate or participate in environmental management and
8 incentive zone subarea planning partnerships;

9 (b) Adopt proposed environmental and incentive zone subarea plans
10 as an alternative means, within a subarea, of meeting the requirements
11 to protect the functions and values of critical areas under this
12 chapter, including critical areas defined in RCW 36.70A.030(5) (a)
13 through (d);

14 (c) Provide exceptions or individual waivers to critical area
15 requirements, within a subarea, including the requirements pertaining
16 to critical areas contained in RCW 36.70A.060, 36.70A.170, and
17 36.70A.172, if the plan as a whole includes best available science for
18 the subarea under consideration and provides at least the equivalent
19 protection of critical area function and value; and

20 (d) Integrate voluntary and nonregulatory incentives and regulatory
21 programs to meet other requirements of this chapter, as well as other
22 state and federal requirements.

23 (2) Cities and counties choosing to initiate planning under this
24 section shall:

25 (a) Appoint a lead management entity; and

26 (b) Create a scoping document to identify: (i) The geographic
27 boundaries of the proposed planning subarea; and (ii) requirements and
28 responsibilities the environmental management incentive zone subarea
29 planning process is designed to meet.

30 (3) For the purposes of this section:

31 (a) "Lead management entity" means a lead subarea planning entity
32 appointed by a city or county, or jointly by participating cities and
33 counties, to coordinate and facilitate the use of nonregulatory
34 incentives under the environmental management incentive zone subarea
35 planning process. Cities, counties, conservation districts, public
36 organizations, and private nongovernmental organizations with authority
37 to receive public funds may serve as a lead management entity.

1 (b) "Planning partnership" means a city or county, or combination
2 of cities and counties, partnering with property owners, stakeholders,
3 conservation districts, and a lead management entity to create and
4 implement an environmental management incentive zone subarea plan.

5 (c) "Plan" means an environmental management incentive zone subarea
6 plan.

7 (4) An appointed lead management entity shall:

8 (a) Apply to the department for funding to plan under this section;

9 (b) Identify and apply for financial and technical assistance from
10 other appropriate public and private sources, including sources at the
11 federal, state, or local level; and

12 (c) Promote and facilitate voluntary contracts, projects, and
13 commitments, and assist partner communities and their constituents in
14 formalizing attendant financial and legal documents.

15 (5) The department shall:

16 (a) Prescribe the form and manner of applications for funding under
17 this section;

18 (b) Select and fund at least five pilot planning efforts; and

19 (c) Rank applications for funding, giving preference to
20 applications with the greatest potential to: (i) Promote voluntary
21 measures, incentives, and educational programs that, when integrated
22 with regulatory measures authorized outside this chapter, will
23 contribute to both the protection of critical area functions and values
24 and the protection of property rights and values; (ii) promote
25 cooperation between multiple and diverse jurisdictions and stakeholders
26 in efforts to conserve contiguous landscapes and avoid uncoordinated
27 land use patterns; (iii) use proven monitoring and adaptive management
28 methods to measure the effectiveness of incentives and programs adopted
29 under this section in achieving critical area protection, and allow for
30 necessary adjustments or improvements to those incentives and programs
31 over time; and (iv) support the economic viability of working natural
32 resource lands and industries.

33 (6) For the purpose of planning or implementing any element of an
34 environmental management and incentive zone subarea plan:

35 (a) Cities, counties, and other appropriate government
36 jurisdictions may enter into interlocal agreements with each other
37 under RCW 39.34.030 or adopt memorandums of agreement with each other
38 or with private entities and nongovernmental organizations;

1 (b) Planning partnerships are encouraged to invite participation
2 from appropriate federal, state, local, private, or tribal agencies,
3 authorities, and organizations with nonregulatory incentive programs or
4 regulatory jurisdiction related to environmental, fish, or wildlife
5 issues within the planning region; and

6 (c) Invited agencies, authorities, and organizations are encouraged
7 to broadly interpret their ability to collaborate as part of a
8 multiagency team and provide a unified assessment of regulatory
9 requirements and nonregulatory opportunities pertinent to planning
10 under this section.

11 (7)(a) A plan adopted under this section must, to the maximum
12 extent practicable, promote and include voluntary, nonregulatory
13 solutions as a planning priority where they would be effective in
14 substantially meeting the goals and requirements of this chapter.

15 (b) Development policies, rules, or conditions may also be included
16 in a plan as necessary, in accordance with nexus and rough
17 proportionality requirements, to provide adequate protection of
18 critical area functions and values.

19 (c) Development policies, rules, and conditions included in the
20 plan under this section may not prohibit uses legally existing on any
21 parcel prior to plan adoption except for those uses restricted or
22 limited through voluntary agreements by landowners included in the plan
23 as permanent or long-term commitments.

24 (d) This section is not intended to impair a landowner's ability to
25 qualify for voluntary incentive programs, such as the conservation
26 reserve enhancement program, that provide for the restoration of fish
27 and wildlife habitat or the improvement of water quality.

28 (8) The legislature intends that cities and counties be given broad
29 deference and discretion consistent with RCW 36.70A.320 to prioritize
30 and balance the goals of this chapter and critical area requirements
31 under RCW 36.70A.060 and 36.70A.172, if the plan as a whole includes
32 best available science for the subarea under consideration and provides
33 at least the equivalent protection of critical area function and value.
34 Growth management hearings boards and reviewing courts shall not find
35 an adopted plan to be out of compliance with this chapter if the
36 adopted plan as a whole satisfies the requirements of this section.

37 (9) A joint legislative oversight committee, consisting of two
38 members from each caucus of the house of representatives and two

1 members from each caucus of the senate, is created. The committee
2 shall appoint a nonvoting advisory counsel, composed of a broad and
3 balanced range of stakeholders, to advise and consult with the
4 committee. Within one year after the effective date of this act, the
5 committee shall review progress of planning efforts initiated under
6 this section and provide the department written comments, if any, on
7 proposed or adopted plans. The department shall cooperate by providing
8 information as requested by the committee. By December 1, 2009, the
9 committee shall provide a joint report to the appropriate committees of
10 the legislature, with recommendations for statutory changes that would
11 provide better integration of voluntary incentives and regulatory
12 programs and promote more effective protection of both property rights
13 and values and critical area functions and values.

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

16 (1)(a) (~~Except as provided in RCW 36.70A.1701,~~) Each county that
17 is required or chooses to plan under RCW 36.70A.040, and each city
18 within such county, shall adopt development regulations on or before
19 September 1, 1991, to assure the conservation of agricultural, forest,
20 and mineral resource lands designated under RCW 36.70A.170.
21 Regulations adopted under this subsection may not prohibit uses legally
22 existing on any parcel prior to their adoption and shall remain in
23 effect until the county or city adopts development regulations pursuant
24 to RCW 36.70A.040. Such regulations shall assure that the use of lands
25 adjacent to agricultural, forest, or mineral resource lands shall not
26 interfere with the continued use, in the accustomed manner and in
27 accordance with best management practices, of these designated lands
28 for the production of food, agricultural products, or timber, or for
29 the extraction of minerals.

30 (b) Counties and cities shall require that all plats, short plats,
31 development permits, and building permits issued for development
32 activities on, or within five hundred feet of, lands designated as
33 agricultural lands, forest lands, or mineral resource lands, contain a
34 notice that the subject property is within or near designated
35 agricultural lands, forest lands, or mineral resource lands on which a
36 variety of commercial activities may occur that are not compatible with
37 residential development for certain periods of limited duration. The

1 notice for mineral resource lands shall also inform that an application
2 might be made for mining-related activities, including mining,
3 extraction, washing, crushing, stockpiling, blasting, transporting, and
4 recycling of minerals.

5 (2) Each county and city shall adopt development regulations that
6 protect critical areas that are required to be designated under RCW
7 36.70A.170. For counties and cities that are required or choose to
8 plan under RCW 36.70A.040, such development regulations shall be
9 adopted on or before September 1, 1991. For the remainder of the
10 counties and cities, such development regulations shall be adopted on
11 or before March 1, 1992.

12 (3) Such counties and cities shall review these designations and
13 development regulations when adopting their comprehensive plans under
14 RCW 36.70A.040 and implementing development regulations under RCW
15 36.70A.120 and may alter such designations and development regulations
16 to insure consistency or to include provisions related to an
17 environmental management and incentive zone subarea plan adopted under
18 section 2 of this act.

19 (4) Forest land and agricultural land located within urban growth
20 areas shall not be designated by a county or city as forest land or
21 agricultural land of long-term commercial significance under RCW
22 36.70A.170 unless the city or county has enacted a program authorizing
23 transfer or purchase of development rights.

24 NEW SECTION. **Sec. 4.** The sum of five hundred thousand dollars, or
25 as much thereof as may be necessary, is appropriated for the fiscal
26 year ending June 30, 2008, from the general fund to the department of
27 community, trade, and economic development for the purposes of
28 environmental management incentive zone subarea planning under this
29 act.

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