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**SUBSTITUTE SENATE BILL 5544**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators McDermott, Fairley, Kline, Kastama, Hobbs, Kilmer, Pridemore, and Kohl-Welles)

READ FIRST TIME 02/18/09.

1 AN ACT Relating to affordable housing incentive programs; and  
2 amending RCW 36.70A.540.

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

4 **Sec. 1.** RCW 36.70A.540 and 2006 c 149 s 2 are each amended to read  
5 as follows:

6 (1)(a) Any city or county planning under RCW 36.70A.040 may enact  
7 or expand affordable housing incentive programs providing for the  
8 development of low-income housing units through development regulations  
9 or conditions on rezoning or permit decisions, or both, on one or more  
10 of the following types of development: Residential; commercial;  
11 industrial; or mixed-use. An affordable housing incentive program may  
12 include, but is not limited to, one or more of the following:

- 13 (i) Density bonuses within the urban growth area;  
14 (ii) Height and bulk bonuses;  
15 (iii) Fee waivers or exemptions;  
16 (iv) Parking reductions; or  
17 (v) Expedited permitting(~~(, conditioned on provision of low income~~  
18 ~~housing units; or~~  
19 ~~(vi) Mixed use projects))~~).

1 (b) The city or county may enact or expand such programs whether or  
2 not the programs may impose a tax, fee, or charge on the development or  
3 construction of property.

4 (c) If a developer chooses not to participate in an optional  
5 affordable housing incentive program adopted and authorized under this  
6 section, a city, county, or town may not condition, deny, or delay the  
7 issuance of a permit or development approval that is consistent with  
8 zoning and development standards on the subject property absent  
9 incentive provisions of this program.

10 (2) Affordable housing incentive programs enacted or expanded under  
11 this section shall comply with the following:

12 (a) The incentives or bonuses shall provide for the  
13 (~~construction~~) development of low-income housing units;

14 (b) Jurisdictions shall establish standards for low-income renter  
15 or owner occupancy housing, including income guidelines consistent with  
16 local housing needs, to assist low-income households that cannot afford  
17 market-rate housing. Low-income households are defined for renter and  
18 owner occupancy program purposes as follows:

19 (i) Rental housing units to be developed shall be affordable to and  
20 occupied by households with an income of fifty percent or less of the  
21 county median family income, adjusted for family size; (~~and~~)

22 (ii) Owner occupancy housing units shall be affordable to and  
23 occupied by households with an income of eighty percent or less of the  
24 county median family income, adjusted for family size. The legislative  
25 authority of a jurisdiction, after holding a public hearing, may  
26 establish lower income levels(~~(-)~~); and

27 (iii) The legislative authority of a jurisdiction, after holding a  
28 public hearing, may also establish higher income levels for rental  
29 housing or for owner occupancy housing upon finding that higher income  
30 levels are needed to address local housing market conditions. The  
31 higher income level for rental housing may not exceed eighty percent of  
32 the county area median family income. The higher income level for  
33 owner occupancy housing may not exceed one hundred percent of the  
34 county area median family income. These established higher income  
35 levels (~~(must be)~~) are considered "low-income" for the purposes of this  
36 section;

37 (c) The jurisdiction shall establish a maximum rent level or sales  
38 price for each low-income housing unit developed under the terms of a

1 program and may adjust these levels or prices based on the average size  
2 of the household expected to occupy the unit. For renter-occupied  
3 housing units, the total housing costs, including basic utilities as  
4 determined by the jurisdiction, may not exceed thirty percent of the  
5 income limit for the low-income housing unit;

6 (d) Where a developer is utilizing a housing incentive program  
7 authorized under this section to develop market rate housing, and is  
8 developing low-income housing to satisfy the requirements of the  
9 housing incentive program, the low-income housing units shall be  
10 provided in a range of sizes comparable to those units that are  
11 available to other residents. To the extent practicable, the number of  
12 bedrooms in low-income units must be in the same proportion as the  
13 number of bedrooms in units within the entire ((building)) development.  
14 The low-income units shall generally be distributed throughout the  
15 ((building, except that units may be provided in an adjacent building.  
16 The low-income units shall)) development and have substantially the  
17 same functionality as the other units in the ((building or buildings))  
18 development;

19 (e) Low-income housing units developed under an affordable housing  
20 incentive program shall be committed to continuing affordability for at  
21 least fifty years. A local government, however, may accept payments in  
22 lieu of continuing affordability. The program shall include measures  
23 to enforce continuing affordability and income standards applicable to  
24 low-income units constructed under this section that may include, but  
25 are not limited to, covenants, options, or other agreements to be  
26 executed and recorded by owners and developers;

27 (f) Programs authorized under subsection (1) of this section may  
28 apply to part or all of a jurisdiction and different standards may be  
29 applied to different areas within a jurisdiction or to different types  
30 of development. Programs authorized under this section may be modified  
31 to meet local needs and may include provisions not expressly provided  
32 in this section or RCW 82.02.020; ((and))

33 (g) Low-income housing units developed under an affordable housing  
34 incentive program are encouraged to be provided within ((market rate  
35 housing)) developments for which a bonus or incentive is provided.  
36 However, programs may allow units to be provided in ((an adjacent)) a  
37 building ((and)) located in the general area of the development for  
38 which a bonus or incentive is provided; and

1        (h) Affordable housing incentive programs may allow a payment~~((s))~~  
2 of money or property in lieu of low-income housing units if the  
3 ~~((payment equals))~~ jurisdiction determines that the payment achieves a  
4 result equal to or better than providing the affordable housing on-  
5 site, as long as the payment does not exceed the approximate cost of  
6 developing the same number and quality of housing units that would  
7 otherwise be developed. Any city or county shall use these funds or  
8 property to support the development of low-income housing, including  
9 support provided through loans or grants to public or private owners or  
10 developers of housing.

11        (3) Affordable housing incentive programs enacted or expanded under  
12 this section may be applied within the jurisdiction to address the need  
13 for increased residential development, consistent with local growth  
14 management and housing policies, as follows:

15        (a) The jurisdiction shall identify certain land use designations  
16 within a geographic area where increased residential development will  
17 assist in achieving local growth management and housing policies;

18        (b) The jurisdiction shall provide increased residential  
19 development capacity through zoning changes, bonus densities, height  
20 and bulk increases, parking reductions, or other regulatory changes or  
21 other incentives;

22        (c) The jurisdiction shall determine that increased residential  
23 development capacity or other incentives can be achieved within the  
24 identified area, subject to consideration of other regulatory controls  
25 on development; and

26        (d) The jurisdiction may establish a minimum amount of affordable  
27 housing that must be provided by all residential developments being  
28 built under the revised regulations, consistent with the requirements  
29 of this section.

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