
SENATE BILL 5239

State of Washington 65th Legislature 2017 Regular Session
By Senators Warnick, Takko, Ericksen, and Becker

1 AN ACT Relating to ensuring that water is available to support
2 development; amending RCW 19.27.097, 36.70A.070, and 58.17.110;
3 adding a new section to chapter 90.44 RCW; creating a new section;
4 and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** By this act, the legislature is amending
7 the law that was under review by the supreme court of Washington in
8 *Whatcom County v. Western Washington Growth Management Hearings Board*
9 (No. 91475-3, October 6, 2016), also known as the Hirst opinion. The
10 legislature finds that the Hirst opinion imposes new requirements
11 that create substantial hardships for property owners who rely on
12 water drawn from wells to support reasonable uses of their property,
13 and that such requirements threaten to halt economic development
14 throughout the state, especially in rural areas. The legislature
15 further finds that the new requirements imposed by the supreme court
16 in the Hirst opinion are unnecessary as a matter of public policy
17 because groundwater withdrawals that are exempt from permitting by
18 the department of ecology under RCW 90.44.050 cumulatively represent
19 less than one percent of the total water used in Washington.
20 Therefore, the legislature is amending pertinent statutes to ensure

1 that prospective application of the law is not controlled by the
2 Hirst opinion.

3 **Sec. 2.** RCW 19.27.097 and 2015 c 225 s 17 are each amended to
4 read as follows:

5 (1) Each applicant for a building permit of a building
6 necessitating potable water shall provide evidence of an adequate
7 water supply for the intended use of the building. Evidence may be in
8 the form of a water right permit from the department of ecology, a
9 letter from an approved water purveyor stating the ability to provide
10 water, or another form sufficient to verify the existence of an
11 adequate water supply, including but not limited to information
12 pertaining to applicable water resources management rules adopted by
13 the department of ecology. If an applicant for a building permit
14 proposes to use a groundwater withdrawal that is exempt from
15 permitting by the department of ecology under RCW 90.44.050 to supply
16 potable water for a building, the local building permitting authority
17 may determine that it is sufficient under this subsection for the
18 applicant to provide evidence that water is physically available for
19 use. In addition to other authorities, the county or city may impose
20 conditions on building permits requiring connection to an existing
21 public water system where the existing system is willing and able to
22 provide safe and reliable potable water to the applicant with
23 reasonable economy and efficiency. An application for a water right
24 shall not be sufficient proof of an adequate water supply.

25 (2) Within counties not required or not choosing to plan pursuant
26 to RCW 36.70A.040, the county and the state may mutually determine
27 those areas in the county in which the requirements of subsection (1)
28 of this section shall not apply. The departments of health and
29 ecology shall coordinate on the implementation of this section.
30 Should the county and the state fail to mutually determine those
31 areas to be designated pursuant to this subsection, the county may
32 petition the department of enterprise services to mediate or, if
33 necessary, make the determination.

34 (3) Buildings that do not need potable water facilities are
35 exempt from the provisions of this section. The department of
36 ecology, after consultation with local governments, may adopt rules
37 to implement this section, which may recognize differences between
38 high-growth and low-growth counties.

1 **Sec. 3.** RCW 36.70A.070 and 2015 c 241 s 2 are each amended to
2 read as follows:

3 The comprehensive plan of a county or city that is required or
4 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
5 and descriptive text covering objectives, principles, and standards
6 used to develop the comprehensive plan. The plan shall be an
7 internally consistent document and all elements shall be consistent
8 with the future land use map. A comprehensive plan shall be adopted
9 and amended with public participation as provided in RCW 36.70A.140.
10 Each comprehensive plan shall include a plan, scheme, or design for
11 each of the following:

12 (1) A land use element designating the proposed general
13 distribution and general location and extent of the uses of land,
14 where appropriate, for agriculture, timber production, housing,
15 commerce, industry, recreation, open spaces, general aviation
16 airports, public utilities, public facilities, and other land uses.
17 The land use element shall include population densities, building
18 intensities, and estimates of future population growth. The land use
19 element shall provide for protection of the quality and quantity of
20 groundwater used for public water supplies. In providing for the
21 protection of the quantity of groundwater used for public water
22 supplies under this subsection, a county or city may rely on or refer
23 to applicable water resources management rules adopted by the
24 department of ecology. Wherever possible, the land use element should
25 consider utilizing urban planning approaches that promote physical
26 activity. Where applicable, the land use element shall review
27 drainage, flooding, and storm water run-off in the area and nearby
28 jurisdictions and provide guidance for corrective actions to mitigate
29 or cleanse those discharges that pollute waters of the state,
30 including Puget Sound or waters entering Puget Sound.

31 (2) A housing element ensuring the vitality and character of
32 established residential neighborhoods that: (a) Includes an inventory
33 and analysis of existing and projected housing needs that identifies
34 the number of housing units necessary to manage projected growth; (b)
35 includes a statement of goals, policies, objectives, and mandatory
36 provisions for the preservation, improvement, and development of
37 housing, including single-family residences; (c) identifies
38 sufficient land for housing, including, but not limited to,
39 government-assisted housing, housing for low-income families,
40 manufactured housing, multifamily housing, and group homes and foster

1 care facilities; and (d) makes adequate provisions for existing and
2 projected needs of all economic segments of the community.

3 (3) A capital facilities plan element consisting of: (a) An
4 inventory of existing capital facilities owned by public entities,
5 showing the locations and capacities of the capital facilities; (b) a
6 forecast of the future needs for such capital facilities; (c) the
7 proposed locations and capacities of expanded or new capital
8 facilities; (d) at least a six-year plan that will finance such
9 capital facilities within projected funding capacities and clearly
10 identifies sources of public money for such purposes; and (e) a
11 requirement to reassess the land use element if probable funding
12 falls short of meeting existing needs and to ensure that the land use
13 element, capital facilities plan element, and financing plan within
14 the capital facilities plan element are coordinated and consistent.
15 Park and recreation facilities shall be included in the capital
16 facilities plan element.

17 (4) A utilities element consisting of the general location,
18 proposed location, and capacity of all existing and proposed
19 utilities, including, but not limited to, electrical lines,
20 telecommunication lines, and natural gas lines.

21 (5) Rural element. Counties shall include a rural element
22 including lands that are not designated for urban growth,
23 agriculture, forest, or mineral resources. The following provisions
24 shall apply to the rural element:

25 (a) Growth management act goals and local circumstances. Because
26 circumstances vary from county to county, in establishing patterns of
27 rural densities and uses, a county may consider local circumstances,
28 but shall develop a written record explaining how the rural element
29 harmonizes the planning goals in RCW 36.70A.020 and meets the
30 requirements of this chapter.

31 (b) Rural development. The rural element shall permit rural
32 development, forestry, and agriculture in rural areas. The rural
33 element shall provide for a variety of rural densities, uses,
34 essential public facilities, and rural governmental services needed
35 to serve the permitted densities and uses. To achieve a variety of
36 rural densities and uses, counties may provide for clustering,
37 density transfer, design guidelines, conservation easements, and
38 other innovative techniques that will accommodate appropriate rural
39 densities and uses that are not characterized by urban growth and
40 that are consistent with rural character.

1 (c) Measures governing rural development. The rural element shall
2 include measures that apply to rural development and protect the
3 rural character of the area, as established by the county, by:

4 (i) Containing or otherwise controlling rural development;

5 (ii) Assuring visual compatibility of rural development with the
6 surrounding rural area;

7 (iii) Reducing the inappropriate conversion of undeveloped land
8 into sprawling, low-density development in the rural area;

9 (iv) Protecting critical areas, as provided in RCW 36.70A.060,
10 and surface water and groundwater resources, which may include
11 measures that rely on or refer to applicable water resources
12 management rules adopted by the department of ecology; and

13 (v) Protecting against conflicts with the use of agricultural,
14 forest, and mineral resource lands designated under RCW 36.70A.170.

15 (d) Limited areas of more intensive rural development. Subject to
16 the requirements of this subsection and except as otherwise
17 specifically provided in this subsection (5)(d), the rural element
18 may allow for limited areas of more intensive rural development,
19 including necessary public facilities and public services to serve
20 the limited area as follows:

21 (i) Rural development consisting of the infill, development, or
22 redevelopment of existing commercial, industrial, residential, or
23 mixed-use areas, whether characterized as shoreline development,
24 villages, hamlets, rural activity centers, or crossroads
25 developments.

26 (A) A commercial, industrial, residential, shoreline, or mixed-
27 use area are subject to the requirements of (d)(iv) of this
28 subsection, but are not subject to the requirements of (c)(ii) and
29 (iii) of this subsection.

30 (B) Any development or redevelopment other than an industrial
31 area or an industrial use within a mixed-use area or an industrial
32 area under this subsection (5)(d)(i) must be principally designed to
33 serve the existing and projected rural population.

34 (C) Any development or redevelopment in terms of building size,
35 scale, use, or intensity shall be consistent with the character of
36 the existing areas. Development and redevelopment may include changes
37 in use from vacant land or a previously existing use so long as the
38 new use conforms to the requirements of this subsection (5);

39 (ii) The intensification of development on lots containing, or
40 new development of, small-scale recreational or tourist uses,

1 including commercial facilities to serve those recreational or
2 tourist uses, that rely on a rural location and setting, but that do
3 not include new residential development. A small-scale recreation or
4 tourist use is not required to be principally designed to serve the
5 existing and projected rural population. Public services and public
6 facilities shall be limited to those necessary to serve the
7 recreation or tourist use and shall be provided in a manner that does
8 not permit low-density sprawl;

9 (iii) The intensification of development on lots containing
10 isolated nonresidential uses or new development of isolated cottage
11 industries and isolated small-scale businesses that are not
12 principally designed to serve the existing and projected rural
13 population and nonresidential uses, but do provide job opportunities
14 for rural residents. Rural counties may allow the expansion of small-
15 scale businesses as long as those small-scale businesses conform with
16 the rural character of the area as defined by the local government
17 according to RCW 36.70A.030(15). Rural counties may also allow new
18 small-scale businesses to utilize a site previously occupied by an
19 existing business as long as the new small-scale business conforms to
20 the rural character of the area as defined by the local government
21 according to RCW 36.70A.030(15). Public services and public
22 facilities shall be limited to those necessary to serve the isolated
23 nonresidential use and shall be provided in a manner that does not
24 permit low-density sprawl;

25 (iv) A county shall adopt measures to minimize and contain the
26 existing areas or uses of more intensive rural development, as
27 appropriate, authorized under this subsection. Lands included in such
28 existing areas or uses shall not extend beyond the logical outer
29 boundary of the existing area or use, thereby allowing a new pattern
30 of low-density sprawl. Existing areas are those that are clearly
31 identifiable and contained and where there is a logical boundary
32 delineated predominately by the built environment, but that may also
33 include undeveloped lands if limited as provided in this subsection.
34 The county shall establish the logical outer boundary of an area of
35 more intensive rural development. In establishing the logical outer
36 boundary, the county shall address (A) the need to preserve the
37 character of existing natural neighborhoods and communities, (B)
38 physical boundaries, such as bodies of water, streets and highways,
39 and land forms and contours, (C) the prevention of abnormally
40 irregular boundaries, and (D) the ability to provide public

1 facilities and public services in a manner that does not permit low-
2 density sprawl;

3 (v) For purposes of (d) of this subsection, an existing area or
4 existing use is one that was in existence:

5 (A) On July 1, 1990, in a county that was initially required to
6 plan under all of the provisions of this chapter;

7 (B) On the date the county adopted a resolution under RCW
8 36.70A.040(2), in a county that is planning under all of the
9 provisions of this chapter under RCW 36.70A.040(2); or

10 (C) On the date the office of financial management certifies the
11 county's population as provided in RCW 36.70A.040(5), in a county
12 that is planning under all of the provisions of this chapter pursuant
13 to RCW 36.70A.040(5).

14 (e) Exception. This subsection shall not be interpreted to permit
15 in the rural area a major industrial development or a master planned
16 resort unless otherwise specifically permitted under RCW 36.70A.360
17 and 36.70A.365.

18 (6) A transportation element that implements, and is consistent
19 with, the land use element.

20 (a) The transportation element shall include the following
21 subelements:

22 (i) Land use assumptions used in estimating travel;

23 (ii) Estimated traffic impacts to state-owned transportation
24 facilities resulting from land use assumptions to assist the
25 department of transportation in monitoring the performance of state
26 facilities, to plan improvements for the facilities, and to assess
27 the impact of land-use decisions on state-owned transportation
28 facilities;

29 (iii) Facilities and services needs, including:

30 (A) An inventory of air, water, and ground transportation
31 facilities and services, including transit alignments and general
32 aviation airport facilities, to define existing capital facilities
33 and travel levels as a basis for future planning. This inventory must
34 include state-owned transportation facilities within the city or
35 county's jurisdictional boundaries;

36 (B) Level of service standards for all locally owned arterials
37 and transit routes to serve as a gauge to judge performance of the
38 system. These standards should be regionally coordinated;

39 (C) For state-owned transportation facilities, level of service
40 standards for highways, as prescribed in chapters 47.06 and 47.80

1 RCW, to gauge the performance of the system. The purposes of
2 reflecting level of service standards for state highways in the local
3 comprehensive plan are to monitor the performance of the system, to
4 evaluate improvement strategies, and to facilitate coordination
5 between the county's or city's six-year street, road, or transit
6 program and the office of financial management's ten-year investment
7 program. The concurrency requirements of (b) of this subsection do
8 not apply to transportation facilities and services of statewide
9 significance except for counties consisting of islands whose only
10 connection to the mainland are state highways or ferry routes. In
11 these island counties, state highways and ferry route capacity must
12 be a factor in meeting the concurrency requirements in (b) of this
13 subsection;

14 (D) Specific actions and requirements for bringing into
15 compliance locally owned transportation facilities or services that
16 are below an established level of service standard;

17 (E) Forecasts of traffic for at least ten years based on the
18 adopted land use plan to provide information on the location, timing,
19 and capacity needs of future growth;

20 (F) Identification of state and local system needs to meet
21 current and future demands. Identified needs on state-owned
22 transportation facilities must be consistent with the statewide
23 multimodal transportation plan required under chapter 47.06 RCW;

24 (iv) Finance, including:

25 (A) An analysis of funding capability to judge needs against
26 probable funding resources;

27 (B) A multiyear financing plan based on the needs identified in
28 the comprehensive plan, the appropriate parts of which shall serve as
29 the basis for the six-year street, road, or transit program required
30 by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
31 35.58.2795 for public transportation systems. The multiyear financing
32 plan should be coordinated with the ten-year investment program
33 developed by the office of financial management as required by RCW
34 47.05.030;

35 (C) If probable funding falls short of meeting identified needs,
36 a discussion of how additional funding will be raised, or how land
37 use assumptions will be reassessed to ensure that level of service
38 standards will be met;

1 (v) Intergovernmental coordination efforts, including an
2 assessment of the impacts of the transportation plan and land use
3 assumptions on the transportation systems of adjacent jurisdictions;

4 (vi) Demand-management strategies;

5 (vii) Pedestrian and bicycle component to include collaborative
6 efforts to identify and designate planned improvements for pedestrian
7 and bicycle facilities and corridors that address and encourage
8 enhanced community access and promote healthy lifestyles.

9 (b) After adoption of the comprehensive plan by jurisdictions
10 required to plan or who choose to plan under RCW 36.70A.040, local
11 jurisdictions must adopt and enforce ordinances which prohibit
12 development approval if the development causes the level of service
13 on a locally owned transportation facility to decline below the
14 standards adopted in the transportation element of the comprehensive
15 plan, unless transportation improvements or strategies to accommodate
16 the impacts of development are made concurrent with the development.
17 These strategies may include increased public transportation service,
18 ride-sharing programs, demand management, and other transportation
19 systems management strategies. For the purposes of this subsection
20 (6), "concurrent with the development" means that improvements or
21 strategies are in place at the time of development, or that a
22 financial commitment is in place to complete the improvements or
23 strategies within six years. If the collection of impact fees is
24 delayed under RCW 82.02.050(3), the six-year period required by this
25 subsection (6)(b) must begin after full payment of all impact fees is
26 due to the county or city.

27 (c) The transportation element described in this subsection (6),
28 the six-year plans required by RCW 35.77.010 for cities, RCW
29 36.81.121 for counties, and RCW 35.58.2795 for public transportation
30 systems, and the ten-year investment program required by RCW
31 47.05.030 for the state, must be consistent.

32 (7) An economic development element establishing local goals,
33 policies, objectives, and provisions for economic growth and vitality
34 and a high quality of life. The element shall include: (a) A summary
35 of the local economy such as population, employment, payroll,
36 sectors, businesses, sales, and other information as appropriate; (b)
37 a summary of the strengths and weaknesses of the local economy
38 defined as the commercial and industrial sectors and supporting
39 factors such as land use, transportation, utilities, education,
40 workforce, housing, and natural/cultural resources; and (c) an

1 identification of policies, programs, and projects to foster economic
2 growth and development and to address future needs. A city that has
3 chosen to be a residential community is exempt from the economic
4 development element requirement of this subsection.

5 (8) A park and recreation element that implements, and is
6 consistent with, the capital facilities plan element as it relates to
7 park and recreation facilities. The element shall include: (a)
8 Estimates of park and recreation demand for at least a ten-year
9 period; (b) an evaluation of facilities and service needs; and (c) an
10 evaluation of intergovernmental coordination opportunities to provide
11 regional approaches for meeting park and recreational demand.

12 (9) It is the intent that new or amended elements required after
13 January 1, 2002, be adopted concurrent with the scheduled update
14 provided in RCW 36.70A.130. Requirements to incorporate any such new
15 or amended elements shall be null and void until funds sufficient to
16 cover applicable local government costs are appropriated and
17 distributed by the state at least two years before local government
18 must update comprehensive plans as required in RCW 36.70A.130.

19 **Sec. 4.** RCW 58.17.110 and 1995 c 32 s 3 are each amended to read
20 as follows:

21 (1) The city, town, or county legislative body shall inquire into
22 the public use and interest proposed to be served by the
23 establishment of the subdivision and dedication. It shall determine:
24 (a) If appropriate provisions are made for, but not limited to, the
25 public health, safety, and general welfare, for open spaces, drainage
26 ways, streets or roads, alleys, other public ways, transit stops,
27 potable water supplies, sanitary wastes, parks and recreation,
28 playgrounds, schools and schoolgrounds, and shall consider all other
29 relevant facts, including sidewalks and other planning features that
30 assure safe walking conditions for students who only walk to and from
31 school; and (b) whether the public interest will be served by the
32 subdivision and dedication.

33 (2) A proposed subdivision and dedication shall not be approved
34 unless the city, town, or county legislative body makes written
35 findings that: (a) Appropriate provisions are made for the public
36 health, safety, and general welfare and for such open spaces,
37 drainage ways, streets or roads, alleys, other public ways, transit
38 stops, potable water supplies, sanitary wastes, parks and recreation,
39 playgrounds, schools and schoolgrounds and all other relevant facts,

1 including sidewalks and other planning features that assure safe
2 walking conditions for students who only walk to and from school; and
3 (b) the public use and interest will be served by the platting of
4 such subdivision and dedication. If it finds that the proposed
5 subdivision and dedication make such appropriate provisions and that
6 the public use and interest will be served, then the legislative body
7 shall approve the proposed subdivision and dedication. Dedication of
8 land to any public body, provision of public improvements to serve
9 the subdivision, and/or impact fees imposed under RCW 82.02.050
10 through 82.02.090 may be required as a condition of subdivision
11 approval. Dedications shall be clearly shown on the final plat. No
12 dedication, provision of public improvements, or impact fees imposed
13 under RCW 82.02.050 through 82.02.090 shall be allowed that
14 constitutes an unconstitutional taking of private property. The
15 legislative body shall not as a condition to the approval of any
16 subdivision require a release from damages to be procured from other
17 property owners.

18 (3) If the preliminary plat includes a dedication of a public
19 park with an area of less than two acres and the donor has designated
20 that the park be named in honor of a deceased individual of good
21 character, the city, town, or county legislative body must adopt the
22 designated name.

23 (4) In approving a subdivision, dedication, or short subdivision
24 under this chapter, a city, town, or county may rely on or refer to
25 applicable water resources management rules adopted by the department
26 of ecology to determine if appropriate provisions have been made for
27 potable water supplies.

28 NEW SECTION. Sec. 5. A new section is added to chapter 90.44
29 RCW to read as follows:

30 (1) A groundwater withdrawal that is exempt from the requirement
31 to obtain a permit from the department under RCW 90.44.050 may not be
32 deemed or considered to be causing impairment or injury to a base
33 flow, minimum flow, minimum level, or other similar standard or
34 policy, established by the department, regardless of the priority
35 date of the base flow, minimum flow, minimum level, or other similar
36 standard or policy.

37 (2) This section does not affect the ability of any person to
38 pursue a cause of action for the protection of any water right that

1 is not a base flow, minimum flow, minimum level, or other similar
2 standard or policy, established by the department.

3 NEW SECTION. **Sec. 6.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of
9 the state government and its existing public institutions, and takes
10 effect immediately.

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